

Rice Marketing Act 1983 No 176

[1983-176]



New South Wales

Status Information

Currency of version

Current version for 15 August 2024 to date (accessed 20 March 2025 at 7:42)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Marketing of Primary Products Act 1983

Authorisation

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File last modified 15 August 2024

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New South Wales

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Rice Marketing Act 1983 No 176



New South Wales

An Act relating to the marketing of certain primary products; to provide for the establishment of marketing boards in relation to certain of those products; to enable the making of marketing orders; to repeal the *Marketing of Primary Products Act 1927*; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Rice Marketing Act 1983*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 (Repealed)

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

area means New South Wales or an area of or locality in New South Wales.

authorised agent means a person appointed under section 50.

authorised buyer means a person appointed under section 51.

authorised person means a person appointed under section 136 for the purposes of the provision in which the expression occurs.

authority means a board or a committee.

board means a board constituted under this Act.

committee means a committee constituted under this Act.

commodity means a primary product, or a variety, grade or class of a primary product, declared to be a commodity by a proclamation in force under Part 2 or 4.

Department means Regional NSW.

futures contract means a product futures contract, a currency futures contract or a financial futures contract.

futures market means a market, exchange or other place at which futures contracts are regularly made or traded.

management audit means a management audit under Part 7.

marketing includes buying, selling, financing, collecting, cleaning, grading, packing, treating, carrying, storing, warehousing, rehandling, distributing (by wholesale or retail), delivering and promoting.

marketing board means a board constituted under this Act.

marketing committee means a committee constituted under this Act.

marketing order means a marketing order under Part 5.

primary product includes—

- (a) any grain, cereal, fruit (fresh, dried or canned), vegetable, livestock, meat, hay, chaff, poultry (live or dead), honey, beeswax or other product of agriculture, grazing, poultry-farming or bee-keeping in New South Wales, and
- (b) any dairy produce (including butter and cheese) and any other article prepared directly from the produce of agriculture, grazing, poultry-farming or bee-keeping in New South Wales,

but does not include wool, fresh milk, eggs or any coarse grain, or oilseed.

proclamation means a proclamation published in the Gazette.

producer, in relation to a primary product, means a person by whom or on whose behalf any of the product is actually grown or produced for sale, and, where any of the product is grown or produced pursuant to any written share-farming agreement or written partnership agreement, includes the parties to the agreement, but does not include a person engaged as an employee on wages or salary or piece-work rates.

product includes article and thing.

regulation means a regulation made under this Act.

Secretary means the Secretary of the Department.

sell means sell by wholesale or by retail, whether by cash, on terms or otherwise, and includes barter, exchange, supply for profit, offer for sale, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale and cause, suffer or allow to be sold, offered or exposed for sale.

- (2) In this Act, a reference to—
 - (a) a function includes a reference to a power, authority and duty, and
 - (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (3) In this Act, a reference, where used in relation to a board or committee, to the commodity is a reference to the commodity for which the board or committee is constituted.
- (4) In this Act, a reference, where used in relation to a marketing order, to the commodity is a reference to the commodity to which the order relates.
- (5) Except as prescribed, a declaration of a primary product as a commodity for the purposes of this Act shall be deemed to be limited to so much of the product as is produced within the area of the board or committee to which it relates.
- (6) For the purposes of this Act, a board is associated with a product if it is, by or under this Act, authorised to exercise marketing or other functions in relation to the product.
- (7) In Part 9, a reference (however expressed) to—
 - (a) an authorised person is, where the reference occurs in connection with a reference to a board or committee, a reference to an authorised person for the board or committee, and
 - (b) a commodity is, where the reference occurs in connection with an authorised person, a reference to a commodity in relation to which a board or committee is constituted (being the board or committee for which the person is an authorised person).
- (8) A power conferred by this Act to declare a primary product to be a commodity includes a power to declare a variety, grade or class of a primary product to be a commodity.
- (9) Notes included in this Act do not form part of this Act.

5 Delegation by the Minister

- (1) The Minister may, by instrument in writing, delegate to a person employed in the Public Service the exercise of such of the functions (other than this power of

delegation) conferred or imposed on the Minister by or under this Act as may be specified in the instrument of delegation, and may, by a like instrument, revoke any such delegation.

(2)–(6) (Repealed)

5A Delegation by Secretary

The Secretary may, by instrument in writing, delegate to any person any of the Secretary's functions under this Act, other than—

- (a) any function of the Minister delegated to the Secretary under section 5, or
- (b) this power of delegation.

Part 2 Constitution of marketing boards

Division 1 Preliminary

6 Definitions

In this Part—

election means an election under this Part.

enrolled means enrolled in the relevant roll of producers under this Part.

poll means a poll under this Part.

Division 2 Petition and poll for constitution of board

7 Petition and proclamation for poll to constitute board

(1) Where the Minister—

- (a) is satisfied, on representations made by petition to the Minister by producers of a primary product within an area that a substantial number of producers of that product within that area desire that a board should be constituted for that product within that area, and
- (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of that product on the question whether a board should be constituted for that product within that area.

(2) Where the Minister—

- (a) is satisfied, on representations made by petition to the Minister by producers of 2

or more primary products within one or more areas, that a substantial number of producers of each product within the relevant area desire that a board should be constituted for all those products within that area or those respective areas, and

- (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of those products on the question whether a board should be constituted for all those products within that area or those respective areas.

- (3) Where the Minister—

(a) is satisfied, on representations made by petition to the Minister by producers of 2 or more primary products within one or more areas, that a substantial number of producers of each product within the relevant area desire that a board should be constituted for such of those products within that area or those respective areas as are the subject of a successful poll, and

- (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of those products on the question whether a board should be constituted for all or some of those products within that area or those respective areas.

- (4) A proclamation under this section may not be made after the commencement of section 5 of the [Agricultural Industry Services Act 1998](#).

Division 3 Constitution of board

8 Proclamation for first election of board

- (1) If more than one-half of the enrolled producers are, at a poll referred to in section 7 (1), in favour of the constitution of a board, the Governor may, by proclamation, direct that an election shall be held for the election of a specified number of representatives of producers of the relevant primary product to be members of the board.
- (2) If more than one-half of the producers respectively enrolled for all the relevant primary products are, at a poll referred to in section 7 (2), in favour of the constitution of a board, the Governor may, by proclamation, direct that an election shall be held for the election of a specified number of representatives of producers of all those products to be members of the board.
- (3) If more than one-half of the producers respectively enrolled for all or some of the relevant primary products are, at a poll referred to in section 7 (3), in favour of the constitution of a board, the Governor may, by proclamation, direct that an election

shall be held for the election of a specified number of representatives of producers of those products to be members of the board.

- (4) The number of representatives to be specified in a proclamation under this section shall be 2, 3, 4 or 5.

9 Electoral districts

- (1) The Governor may, by proclamation, appoint electoral districts for an election and fix the number of persons who may be elected from each such district.
- (2) A person is not entitled to be a candidate for more than one electoral district at any election.
- (3) The Governor may, by proclamation, vary or abolish any electoral district or vary the number of persons who may be elected from any such district.
- (4) A decrease in the number of elected members for an electoral district operates as from the expiration of the term of office of the then current elected members of the board concerned.
- (5) Notwithstanding subsection (4), a decrease in the number of elected members for an electoral district operates immediately, if there is, at the time the proclamation under subsection (3) takes effect, a corresponding number of vacancies in the offices of elected members for the district.
- (6) Nothing in this section authorises the number of elected members of a board to be greater than the number authorised under the other provisions of this Act.

10 Constitution of board and declaration of commodity

- (1) After the first election of persons for appointment as members of a board, the Governor may, by proclamation—
- (a) declare that section 11 applies for the purpose of constituting a board, with a specified corporate name, for a specified primary product and in relation to a specified area,
- (b) specify the number of elected members and nominated members constituting the board, and
- (c) declare that the product is a commodity for the purposes of this Act.
- (2) The primary product and area to be specified in the proclamation shall be those for or in relation to which the poll was taken and the first election was held, and the number of elected members to be specified in the proclamation shall be that specified in the relevant proclamation under section 8 for the first election.

11 Constitution of board

- (1) Where a proclamation under section 10 takes effect in relation to a board, there is hereby constituted a corporation under the corporate name specified in the relevant proclamation, for the primary product so specified and in relation to the area so specified.
- (2) A board shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (3) The members of a board shall be appointed by the Governor.
- (4) A board is to consist of 3 elected members and 4 nominated members.
- (5) The nominated member or members of a board shall be nominated for appointment by the Minister.
- (6) A board does not, for any purpose, represent the Crown.
- (7) The Governor may, by proclamation, specify the objects of a board referred to in the proclamation, and the board shall, as far as practicable, have regard to those objects in the exercise of the functions conferred or imposed on it by or under this or any other Act, but nothing in this subsection authorises or requires the board to contravene any provisions of this Act or of any other law.
- (8) A board—
 - (a) has perpetual succession,
 - (b) shall have a common seal,
 - (c) may take proceedings, and be proceeded against, in its corporate name,
 - (d) subject to this Act, may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property, and
 - (e) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the board is constituted.
- (9) Schedule 2 has effect with respect to the members of a board.
- (10) Schedule 3 has effect with respect to the procedure of a board.

12 (Repealed)

13 Change of name of board

- (1) The Governor may, at the request or with the consent of a board, by proclamation, change the corporate name of the board.

- (2) No such change of name of a board affects any rights or obligations of the board or renders defective any legal proceedings instituted or to be instituted by or against the board, and any legal proceedings may be continued or commenced by or against the board by its new name that might have been continued or commenced by or against the board by its former name.

14 Board may control one or more commodities

- (1) A board may be constituted under this Act for one or more commodities.
- (2) Where an election is to be held for a board constituted or to be constituted for more than one primary product, the Governor may, by proclamation, make such provision for the representation by election of the producers of each of the products on the board as the Governor deems proper.
- (3) Nothing in this section authorises the respective numbers of elected members and nominated members of a board to be greater than the numbers authorised under the other provisions of this Act.

15 Board may employ staff

- (1) For the purpose of enabling it to exercise its functions, a board may employ such staff and engage such consultants as it thinks fit.
- (2) With the approval of the Minister and upon such terms and conditions as are agreed upon, a board may make use of the services of any person employed in the Department.
- (3) With the approval of the other authority and upon such terms and conditions as are agreed upon, a board may make use of the services of any of the staff of another authority.

Division 4 Addition of commodity or area to control of board

16 Operation of Division

- (1) This Division authorises—
 - (a) an additional primary product to be added to the control of a board,
 - (b) an additional area to be added to the control of a board, or
 - (c) an additional primary product and an additional area to be added to the control of a board.
- (2) This Division does not authorise—
 - (a) a primary product to be so added in relation to an area if another board has been constituted for that product in relation to the whole or any part of that area and

that board remains in existence, or

- (b) an area to be so added in relation to a primary product if another board has been constituted for that product in relation to the whole or any part of that area and that board remains in existence.

17 Petition and proclamation for poll to add product or area to control of board

Where the Minister—

(a) is satisfied—

- (i) on representations made by petition to the Minister by producers of a primary product within an area, that a substantial number of the producers of that product within that area desire that that product or that area or both should be added to the control of a specified board, and

(ii) that this Division authorises the addition, and

- (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of that product within that area on the question whether that product or that area or both should be added to the control of that board.

18 Proclamation of addition of commodity or area

- (1) If more than one-half of the enrolled producers are, at a poll referred to in section 17, in favour of the addition of a primary product or area to the control of a specified board, the Governor may, by proclamation—

(a) declare that the specified commodity, or specified area, or specified commodity and specified area, as the case may require, is or are added to the control of the board, and

(b) so far as may be relevant, declare that the product is a commodity for the purposes of this Act.

- (2) A board referred to in subsection (1) shall be deemed to have been constituted for any additional primary product and in relation to any additional area, as specified in the proclamation, in addition to the product for which and the area in relation to which it was already constituted.

- (3) Nothing in this section affects the continuity of any corporation constituted under section 11.

19 Existing producers may also be polled

- (1) If the board referred to in section 17 so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of each commodity for which the board is already constituted on the question mentioned in that section.
- (2) The poll to be taken under this section on a particular question shall be taken on the same day as the poll to be taken under section 17 on the same question.
- (3) If a direction is given under this section, a declaration may not be made under section 18 unless at least one-half of the enrolled producers of each commodity for which the board is already constituted are, at the poll to be taken under this section, also in favour of the addition of the product or area to the control of the board.
- (4) Where the board is already constituted for 2 or more commodities, the poll to be taken under this section shall be a single poll of the producers of all those commodities.

Division 5 Amalgamation of boards

20 Operation of Division

This Division authorises the amalgamation of 2 or more boards—

- (a) at the request of the boards concerned, or
- (b) following consideration of representations invited by the Minister.

21 Request for amalgamation by boards

- (1) Two or more boards may, by instruments in writing under their respective seals, make a request to the Minister for action to be taken for the boards to be amalgamated.
- (2) The Minister may refuse to consider such a request unless the request is confirmed by both or all of the boards concerned, by similar instruments, within such period as the Minister determines.

22 Invitation by Minister for representations on amalgamation

- (1) The Minister may, by a notice published in the Gazette and in such other ways as the Minister thinks proper, invite representations by any persons on the question whether 2 or more specified boards should be amalgamated.
- (2) A notice published under this section shall state the time by which and the manner in which representations are to be made.
- (3) A notice may be published under this section whether or not the boards concerned have made a request under section 21, but nothing requires such a notice to be

published before action is taken following the making and (if required) confirmation of such a request.

23 Proclamation of amalgamation

(1) Where the Minister—

(a) is satisfied—

- (i) that a request has been made, and (if required) confirmed, in accordance with section 21 by 2 or more boards, or
- (ii) that, although such a request has not been made or, if made, has not (if required) been confirmed, in accordance with that section, and after taking into consideration all representations made in accordance with section 22 on the question whether the boards should be amalgamated, action ought to be taken in the best interests of the producers concerned for the amalgamation of the boards, and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, declare that the boards are amalgamated.

(2) The proclamation declaring that boards are amalgamated shall also—

- (a) declare that the individual boards are dissolved,
- (b) declare that a board, with a specified corporate name, is constituted for specified primary products and in relation to specified areas,
- (c) specify the number of elected members and nominated members who are to constitute the board, and
- (d) declare that the products are commodities for the purposes of this Act.

(3) The primary products and areas to be specified in the proclamation shall be those for or in relation to which the dissolved boards were constituted immediately before the dissolution, and each such product shall, by the proclamation, be identified with the same area as in the previous relevant proclamations.

24 Consequences of amalgamation

(1) When a proclamation under section 23 declaring that 2 or more boards are amalgamated takes effect—

- (a) the individual boards declared by the proclamation to be dissolved are dissolved, and
- (b) a person who, immediately before the dissolution takes effect, held office as a

member of one of the dissolved boards—

- (i) shall cease to hold office as such,
- (ii) is eligible, if otherwise qualified, to be appointed as a member of the new board, and
- (iii) is not entitled to be paid any remuneration or compensation by reason of ceasing to hold that office.

- (2) A board established pursuant to a proclamation under section 23 is a continuation of, and the same legal entity as, the boards dissolved pursuant to that proclamation.
- (3) Division 3 has effect as if the board declared to be constituted by a proclamation under section 23 had been declared to be constituted by a proclamation under section 10.

25 Interim arrangements as to elected members of amalgamated board

- (1) Notwithstanding anything in this Act, if the number of elected members of the dissolved boards does not, immediately before the boards are dissolved by the operation of this Division, exceed the number specified in the relevant proclamation under section 23, those members are eligible to be appointed as elected members of the new board, without further election, for a term not exceeding 12 months.
- (2) Notwithstanding anything in this Act, if the number of elected members of the dissolved boards does, immediately before the boards are dissolved by the operation of this Division, exceed the number specified in the relevant proclamation under section 23, such of those members as the respective boards have specified by instrument in writing under their respective seals are eligible to be appointed as elected members of the new board, without further election, for a term not exceeding 12 months.
- (3) If the number of persons specified by the boards under subsection (2) exceeds the number of vacancies to be filled, the persons to be appointed shall be such of them as the Minister nominates.
- (4) If the number of persons specified by the boards under subsection (2) is less than the number of vacancies to be filled, or no persons are so specified, or any or all of the persons so specified are unavailable for appointment, the persons to be appointed shall be such (if any) of them as are available to be appointed and such other persons as the Minister nominates.
- (5) Any persons appointed pursuant to this section shall be deemed to be elected members of the board concerned, and shall hold office, subject to this Act, for a term not exceeding 12 months.

- (6) Subject to this section, the term of office of the members appointed pursuant to this section shall be that specified by the Governor in the relevant instrument of appointment.
- (7) A person appointed as an elected member of a board pursuant to this section is eligible (if otherwise qualified) for re-appointment in accordance with the other provisions of this Act.

Division 6 Removal of commodity or area from control of board

26 Operation of Division

- (1) This Division authorises—
 - (a) the removal of a commodity from the control of a board, or
 - (b) the removal of an area from the control of a board in relation to a commodity, by petition of producers of the commodity.
- (2) This Division does not authorise any removal referred to in subsection (1) unless the board would, after the removal, retain control of a commodity in relation to an area.

27 Petition and proclamation for poll for removal of commodity or area from control of board

- (1) Where the Minister—
 - (a) is satisfied—
 - (i) on representations made by petition to the Minister by producers of a commodity for which a board is constituted, that a substantial number of the producers within the area in respect of which the board is constituted desire that the commodity should be removed from the control of the board, and
 - (ii) that this Division authorises the removal, and
 - (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of that commodity within that area on the question whether that commodity should be removed from the control of the board.

- (2) Where the Minister—
 - (a) is satisfied, on representations made by petition to the Minister by producers of a commodity for which a board is constituted, that a substantial number of the producers within the area in respect of which the board is constituted desire that

part of that area should be removed from the control of the board, and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of that commodity within that part of that area on the question whether that part of that area should be removed from the control of the board.

28 Removal of commodity or area from control of board

(1) Where the Minister—

(a) is satisfied that more than one-half of the enrolled producers are, at a poll referred to in section 27, in favour of the removal of a commodity or part of an area from the control of a board, and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the board to wind up so much of its affairs as relates to the commodity or the part of the area, as the case may require.

(2) Upon a proclamation under subsection (1) taking effect, the board shall proceed to wind up its affairs to the extent that the direction so provides.

(3) A proclamation under subsection (1) may revoke a declaration of a primary product as a commodity for the purposes of this Act or reduce the area for which a marketing board is constituted, or both, as the case may require, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.

29 Other producers may also be polled

(1) If the board referred to in section 27 (1) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of each other commodity for which the board is constituted on the question mentioned in that subsection.

(2) If the board referred to in section 27 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of the commodity within the other part of the area on the question mentioned in that subsection.

(3) If the board referred to in section 27 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of—

- (a) the commodity within the other part of the area, and
 - (b) each other commodity for which the board is constituted,
- on the question mentioned in that subsection.
- (4) A poll to be taken under this section on a particular question shall be taken on the same day as the poll to be taken under section 27 on the same question.
 - (5) If a direction is given under this section, a direction may not be given under section 28 unless at least one-half of the enrolled producers referred to in the firstmentioned direction are also in favour of the removal of the commodity or part of an area from the control of the board.
 - (6) The poll to be taken under subsection (1) or (3) shall be a single poll of the producers referred to in that subsection.

Division 7 Winding up and dissolution of board

30 Operation of Division

- (1) This Division authorises the winding up and dissolution of a board—
 - (a) by petition of producers of the commodity,
 - (b) at the request of the board itself, or
 - (c) on the recommendation of the Minister.
- (2) Nothing in this Division limits the operation of Part 10.

31 Advertisement by Minister as to time for petition

- (1) The Minister shall cause a notice to be published in the Gazette, and in such other manner as the Minister is satisfied is likely to bring the notice to the attention of producers of the commodity, specifying the period during which a petition for the dissolution of a board may be presented to the Minister, as referred to in section 32.
- (2) A notice referred to in subsection (1) shall be published within the period of 3 months ending 3 months before the beginning of each period during which such a petition may be so presented.

32 Petition and proclamation for poll to dissolve board

- (1) Where the Minister—
 - (a) is satisfied—
 - (i) on representations made by petition to the Minister by producers of the commodity for which a board is constituted, that a substantial number of the

producers desire that the board should be dissolved, and

(ii) that the petition was presented to the Minister during a permitted period, as defined in subsection (3), and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of that commodity within the area in respect of which the board is constituted on the question whether the board should be dissolved.

(2) The date for the taking of the poll may be the same as that fixed for an election of members of the board.

(3) In this section, ***permitted period*** means a period of 6 months commencing 12 months before the end of the term of office specified for the elected members of the board or, if different terms are specified, the later or latest of them, other than the first such period following the constitution of the board pursuant to a proclamation under section 10 or 23.

33 Request for dissolution by board

(1) A board may, by instrument in writing under its seal, make a request to the Minister for action to be taken for the board to be dissolved.

(2) The Minister may refuse to consider such a request unless the request is confirmed by the board, by a similar instrument, within such period as the Minister determines.

34 Invitation by Minister for representations on dissolution

(1) The Minister may, by a notice published in the Gazette and in such other ways as the Minister thinks proper, invite representations by any persons on the question whether a particular board should be dissolved.

(2) A notice published under this section shall state the time by which and the manner in which representations are to be made.

(3) A notice may be published under this section whether or not the board concerned has made a request under section 33, but nothing requires such a notice to be published before action is taken following the making and (if required) confirmation of such a request.

35 Winding up and dissolution

(1) Where the Minister—

(a) is satisfied—

- (i) that more than one-half of the enrolled producers are, at a poll referred to in section 32, in favour of the dissolution of a particular board,
 - (ii) that a request has been made, and (if required) confirmed, in accordance with section 33 by a board, or
 - (iii) that, although such a request has not been made or, if made, has not (if required) been confirmed, in accordance with section 33, and after taking into consideration all representations made in accordance with section 34 on the question of the dissolution of a board, action ought to be taken in the best interests of the producers concerned for that dissolution, and
- (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the board to wind up its affairs.

- (2) Upon a proclamation under subsection (1) taking effect, the board shall proceed to wind up its affairs.
- (3) Notwithstanding subsection (2)—
- (a) the Governor may, by proclamation, appoint any person to be liquidator for the purpose of the winding up, and
 - (b) the liquidator may, for that purpose, on behalf and in the name and as the act and (where necessary) under the seal of the board, bring and defend such proceedings, and do and execute such acts, deeds and things, as may be necessary.
- (4) A proclamation under subsection (3) may revoke a declaration of a primary product as a commodity for the purposes of this Act, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.
- (5) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of, a liquidator appointed under this section, as certified from time to time by the Minister, shall be payable from the funds of the board.
- (6) The members of a board may not exercise any functions as members while a person holds office as liquidator of the board.
- (7) Where the Minister is of the opinion that the affairs of a board are wound up, the Governor may, by proclamation, dissolve the board, and all money and other assets of the board shall become the property of the State and shall be dealt with and disposed of as the Governor may direct.

Division 8 General provisions

36 Expiry and effect of petitions

- (1) A petition presented to the Minister for the purposes of this Part shall be deemed not to have been presented if no action has been taken pursuant to its presentation within 12 months after the date it was presented.
- (2) Nothing in this Act shall be construed as requiring a direction to be given for a poll to be taken in consequence of the presentation of a petition to the Minister for the purposes of this Part.

37 Certain persons deemed to be producers for the purposes of petition, poll or election

Where any primary product results from a process of manufacture or treatment of an article grown or produced by a farmer, orchardist, vegetable grower, grazier, poultry farmer, apiarist or dairyman, the grower or producer of the article shall, for the purpose of any petition, poll or election under this Part, be deemed to be a producer of the product.

38 Report to be published in connection with poll

As soon as practicable after a proclamation under this Part is published in the Gazette directing that a poll be taken, and before the day fixed for the taking of the poll, the Secretary shall cause a report relating to the proposal to which the poll relates to be published in such manner as the Secretary considers appropriate.

39 Provisions as to polls

- (1) The regulations may, subject to this Act, make provision for or with respect to the conduct of polls.
- (2) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, shall be the returning officer for the poll, and shall have and may exercise the functions conferred or imposed on the returning officer by the regulations in relation to the poll.
- (3) A roll of producers of the primary product producing it within the relevant area shall be prepared for the poll in the prescribed manner.
- (4) Notwithstanding anything in this Part, and if the regulations so provide—
 - (a) the producers entitled to vote in accordance with the regulations at a poll shall be the producers having such qualifications as may be prescribed, and
 - (b) only those producers may vote at the poll.
- (5) The regulations may make provision for or with respect to fixing or postponing the date for the taking of a poll.

(6) The regulations may provide that—

- (a) it is compulsory for a producer, or a producer of a prescribed class or description, to be enrolled or to apply for enrolment in the relevant roll of producers,
- (b) it is compulsory for producers enrolled in the relevant roll of producers to vote at the poll,
- (c) a producer shall be deemed to be enrolled or to apply for enrolment in the relevant roll of producers if a person of a prescribed class or description is so enrolled or so applies as the representative of the producer, and
- (d) a representative referred to in paragraph (c) shall, for the purposes of enrolment and of the poll, be deemed to be a producer,

and the regulations may impose a penalty not exceeding 0.1 penalty unit for a breach of any such provision of the regulations.

40 Provisions as to elections

- (1) The regulations may, subject to this Act, make provision for or with respect to the election of persons for appointment as the elected members of a board.
- (2) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, shall be the returning officer for an election, and shall have and may exercise the functions conferred or imposed on the returning officer by the regulations in relation to the election.
- (3) A roll of producers entitled to vote at an election shall be prepared for the election in the prescribed manner.
- (4) Notwithstanding anything in this Part, and if the regulations so provide—
 - (a) the producers entitled to vote in accordance with the regulations at an election shall be the producers having such qualifications as may be prescribed, and
 - (b) only those producers may vote at the election.
- (5) Notwithstanding anything in this Part, and if the regulations so provide—
 - (a) the persons entitled to be nominated as candidates for election as members of a board shall be persons having such qualifications as may be prescribed, and
 - (b) a person's nomination is invalid if the person does not have those qualifications.
- (6) The regulations may make provision for or with respect to fixing or postponing the date for an election.
- (7) The regulations may provide that—

- (a) it is compulsory for a producer, or a producer of a prescribed class or description, to be enrolled or to apply for enrolment in the relevant roll of producers,
- (b) a producer shall be deemed to be enrolled or to apply for enrolment in the relevant roll of producers if a person of a prescribed class or description is so enrolled or so applies as the representative of the producer, and
- (c) a representative referred to in paragraph (b) shall, for the purposes of enrolment and of the election, be deemed to be a producer,

and the regulations may impose a penalty not exceeding 0.1 penalty unit for a breach of any such provision of the regulations.

- (8) Voting at an election is not compulsory.
- (9) To the extent that there is a failure to nominate a sufficient number of persons, or to the extent that an election fails for any other reason, the Governor may appoint a person or persons nominated by the Minister to be a member or members of a board, and a person so nominated shall, on being appointed, be deemed to be a person elected in accordance with the regulations.

41 Dismissal of board

- (1) The Governor may, if of the opinion that circumstances have arisen rendering it advisable to do so, by proclamation, remove all the members of a board from office, but they or any of them are eligible (if otherwise qualified) for re-appointment.
- (2) The Minister shall cause a report of, and the reasons for, the removal of the members of a board under this section to be laid before each House of Parliament within 14 sitting days of that House after the date of publication of the proclamation under subsection (1) in the Gazette.
- (3) For the purposes of subsection (2), sitting days shall be counted, whether or not they occur during the same session.

42 Board not to be concerned in party politics

- (1) It shall not be lawful for any board to expend any of its funds for any purpose whatever in connection with the politics of any political party, nor shall any board become affiliated in any way whatever with any body, association or organisation having for its objects or any of its objects the support of the politics or program or aims of any political party.
- (2) Without limiting section 41, if at any time the Governor is satisfied that a board has acted in contravention of any of the provisions of subsection (1), action may be taken under that section.

43 Appointment of administrator

- (1) The Governor may, by proclamation, appoint a person to be administrator of a board, where—
 - (a) all the members of the board have vacated their offices or have been removed from their offices, or
 - (b) all or any of the members of the board retain their offices and the Minister has certified to the Governor that the Minister is satisfied that it would be in the best interests of the board that an administrator be appointed.
- (2) The administrator of a board appointed under this section has all the functions of the board, and any act, matter or thing done or omitted to be done by the administrator shall have the same effect as if done or omitted by the board.
- (3) The Governor may, by proclamation—
 - (a) remove from office any person appointed as administrator under this section, and
 - (b) fill any vacancy in the office of administrator.
- (4) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of a board by, an administrator appointed under this section, as certified from time to time by the Minister, shall be payable from the funds of the board.
- (5) The members of a board may not exercise any functions as members while a person holds office as administrator of the board.

Part 3 Marketing of commodities: marketing boards

Division 1 General functions of boards

44 Functions relating to the marketing of the commodity

- (1) A board may market or arrange for the marketing of the commodity vested in or delivered or to be delivered to it, and do all acts, matters and things necessary or expedient in that behalf accordingly.
- (2) It is the duty of a board, in exercising its functions under this Act, to ensure, as far as practicable, the wholesomeness and purity of the commodity in the interests of public health.

45 Voluntary deliveries of the commodity

- (1) A board may arrange with a producer of the commodity produced or to be produced within the area of the board (being a part of the commodity that is not vested in the board) for the delivery of any of that commodity during such period and on such terms

and conditions as the board thinks fit.

- (2) A board may arrange with a producer of a primary product produced or to be produced outside the area of the board (being a product that, if produced within the area of the board, would answer the description of the commodity) for the delivery of any of the product during such period and on such terms and conditions as the board thinks fit.
- (3) Any of the commodity or other primary product, in so far as that commodity or other primary product is the subject of an arrangement under this section, shall, subject to the terms of the arrangement, be deemed, for the purposes of this Act, to be part of the commodity for which the board is constituted.
- (4) This section does not authorise a board to enter into an arrangement with respect to a primary product that is a commodity for which another board or a committee is constituted, except with the consent of the other board or of the committee.

46 Board may deal in the commodity

- (1) In this section, **commodity** includes a primary product that, if produced in the area of the board concerned, would answer the description of the commodity.
- (2) A board may purchase the commodity for the purpose of—
 - (a) marketing or using it, or
 - (b) providing the commodity for consumption within the area of the board, whether or not during periods of shortage,and may market, use or provide the commodity accordingly.
- (3) This section does not authorise a board to purchase any primary product that is a commodity for which another board or a committee is constituted, except with the consent of the other board or of the committee.

47 Grades and wholesale prices of the commodity

A board may—

- (a) establish grades, classes or descriptions of the commodity, and
- (b) fix the price at which, and the terms and conditions of payment under which, a grade, class or description of the commodity may be sold by wholesale.

48 Manufacturing and processing of the commodity

- (1) A board may, with the approval of the Minister, and subject to any conditions for the time being approved by the Minister—
 - (a) establish and conduct processing or manufacturing facilities for the commodity,

for use by the board or by others,

(b) process any of the commodity or manufacture products from or based on the commodity, and

(c) market any of the products so processed or products so manufactured or any by-products resulting from any such processing or manufacturing.

(2) Nothing in this section operates to require approval for anything to be done under this section which may instead be done under any other provision of this Part.

49 Board may deal in other products etc

(1) In this section, ***other primary product*** means any primary product other than—

(a) the commodity for which the board concerned is constituted, and

(b) any product that, if produced within the area of the board concerned, would answer the description of the commodity.

(2) A board may, with the approval of the Minister, and subject to any conditions for the time being determined by the Minister—

(a) market and otherwise deal in any other primary product,

(b) establish and conduct processing or manufacturing facilities for any other primary product, for use by the board or by others,

(c) use facilities referred to in section 48 (1) for any other primary product,

(d) process any other primary product or manufacture products from or based on any other primary product,

(e) market any of the products so processed or products so manufactured,

(f) manufacture articles or things for use in connection with marketing the commodity, any other primary product or any other product, and

(g) market any of the articles or things so manufactured.

(3) A board may not under this section deal with a primary product that is a commodity for which another board or committee is constituted, except with the consent of the other board or of the committee.

50 Appointment of authorised agents

(1) A board may, by order in writing, appoint any person to be an authorised agent to act as the board's agent for the purpose of exercising such of the board's functions as may be specified in the order.

- (1A) Subject to the regulations, an order under subsection (1) may impose on a person's appointment as an authorised agent such conditions as the board considers appropriate.
- (1B) Without limiting subsection (1A), such conditions may include conditions as to the circumstances in which, and the manner in which, the authorised agent may exercise the board's functions.
- (2) Where a board appoints an authorised agent under subsection (1) for the purpose of exercising any functions of the board, those functions may be carried out by any employee, or agent, of the authorised agent who is authorised to do so by the authorised agent.
- (3) For the purposes of this Act, and if the relevant order referred to in subsection (1) so provides—
 - (a) an authorised agent of a board shall be deemed to deliver a portion of the commodity to the board, and
 - (b) the board shall be deemed to accept that portion,in such circumstances as may be specified in the order.
- (4) A board may enter into an agreement with an authorised agent of the board for retention by the authorised agent of such part of the proceeds of the sale by the authorised agent of any of the commodity or any other product as is provided for in the agreement.

51 Appointment of authorised buyers

- (1) A board may, by order in writing, appoint any person to be an authorised buyer.
 - (1A) Subject to the regulations, the manner in which an application for appointment as an authorised buyer is to be made to a board, or dealt with by a board, is to be as determined by the board.
 - (1B) The regulations may make provision for or with respect to the fees payable to a board by authorised buyers and by applicants for appointment as authorised buyers.
 - (1C) A board may refuse to appoint a person as an authorised buyer if and only if—
 - (a) an earlier order appointing the person as an authorised buyer has been revoked during the previous 2 years (otherwise than at the person's request), or
 - (b) the board reasonably believes that the person would not comply with the conditions to which the authorised buyer would be subject if the appointment were made.
- (2) An authorised buyer is, subject to and in accordance with the relevant order referred

to in subsection (1), authorised to purchase, on the authorised buyer's own account, from a producer of the commodity or any other person any of the commodity which that producer or other person is entitled to sell.

- (3) Where a board appoints an authorised buyer under subsection (1) the powers conferred by subsection (2) may be exercised by any employee, or agent, of the authorised buyer who is authorised to do so by the authorised buyer.
- (4) A board may enter into an agreement with an authorised buyer for payment of commission or other remuneration to the authorised buyer.
- (5) An authorised buyer may also be an authorised agent.
- (6) A person who applies to a board for appointment as an authorised buyer may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of any decision made by the board with respect to the application.
- (7) A person whose appointment as an authorised buyer is varied, suspended or revoked by a board may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the board's decision to vary, suspend or revoke the appointment.
- (8) Subsections (6) and (7) do not apply to a decision by the board to impose on a person's appointment as an authorised buyer any condition of the kind referred to in section 51A (2).

51A Conditions of appointment as authorised buyer

- (1) Subject to the regulations, an order under section 51 (1) may impose on a person's appointment as an authorised buyer such conditions as the board considers appropriate (**conditions of appointment**).
- (2) Without limiting subsection (1), the conditions of appointment of an authorised buyer must include a condition prohibiting, except with the board's written approval, any sale or supply to persons outside Australia of any commodity purchased by the authorised buyer pursuant to the power conferred by section 51 (2).
 - (2A) An approval under subsection (2) may not authorise the sale or supply, during any period, of any commodity purchased by an authorised buyer if—
 - (a) another approval under that subsection authorises the sale or supply, during the same period, of the same kind of commodity purchased by some other authorised buyer, and
 - (b) the board has given a written undertaking to the other authorised buyer that it will not give another approval in respect of the sale or supply of that commodity

during that period.

- (3) A condition of appointment may not limit the period for which a person's appointment as an authorised buyer is to have effect.
- (4) A board may suspend or revoke a person's appointment as an authorised buyer if and only if it is satisfied that the person has contravened a condition of appointment.
- (5) An authorised buyer who contravenes a condition of appointment (otherwise than as referred to in subsection (6)) is guilty of an offence against this Act.

Maximum penalty—200 penalty units.

- (6) An authorised buyer who sells or supplies a commodity in contravention of a condition of appointment is guilty of an offence against this Act.

Maximum penalty—2,000 penalty units.

- (7) On the application of the Minister, the Supreme Court may order a person who has sold or supplied a commodity in contravention of a condition of appointment (being a commodity purchased by the person as an authorised buyer) to pay to the Minister, for payment to the Consolidated Fund, an amount equivalent to its estimate of—

- (a) the proceeds of the sale of the commodity, or
- (b) the value of the commodity supplied,

as the case may be.

- (8) An order under subsection (7) may be made against a person whether or not the person has been prosecuted or convicted in respect of an offence under subsection (6).

51B General prohibition on sale or supply of commodities outside Australia

- (1) A person who sells or supplies any commodity to a person outside Australia is guilty of an offence.

Maximum penalty—2,000 penalty units.

- (2) This section does not apply to the sale or supply of a commodity to a person outside Australia pursuant to a written approval under section 51A (2).
- (3) This section applies only in relation to the sale or supply of rice grown in New South Wales, being the commodity in respect of which the Rice Marketing Board for the State of New South Wales is constituted.

52 Board may act as marketing agent

- (1) A board may act as agent for any person (including another board) for the purpose of

marketing—

- (a) any of the commodity which that person is entitled to sell, or
- (b) with the approval of the Minister, any other primary product which that person is entitled to sell,

whether or not it was produced within the area of the board or within New South Wales, and may do all acts, matters and things necessary or expedient in that behalf accordingly.

- (2) (Repealed)
- (3) Nothing in the *Property and Stock Agents Act 2002* applies to or in respect of anything done by a board in pursuance of subsection (1).
- (4) Without limiting its functions, a board may, when acting as agent under subsection (1), enter into all such arrangements with respect to marketing the relevant commodity or other product as if it were the principal.
- (5) A board may not under this section deal with the commodity for which another board or a committee is constituted, except with the consent of the other board or the committee.

53 Board may act as purchasing agent

- (1) A board may, with the approval of the Minister, act as agent for any persons for the purpose of purchasing equipment, machinery, seed, fertilizer or any other article or thing for use in the production of the commodity.
- (2) Without limiting its functions, a board may, when acting as agent under subsection (1), enter into all such arrangements with respect to any purchases referred to in subsection (1) as if it were the principal.

54 Miscellaneous functions

- (1) Without limiting the generality of the foregoing provisions of this Division, a board may—
 - (a) make such arrangements as it deems necessary with regard to sales of the commodity or any other product with which the board is associated for export or for consignment to other countries or other parts of Australia,
 - (b) enter into insurance contracts relating to the commodity or any other product with which the board is associated,
 - (c) promote and encourage the use, sale or consumption of the commodity or any other product with which the board is associated,

- (d) establish and maintain laboratories and carry out research and make investigations into matters relating to the commodity and any other product with which the board is associated (including chemical, physical, bacteriological and economic research and investigations),
 - (e) devise and initiate as far as may be practicable improved methods of producing, marketing and using the commodity and any other product with which the board is associated,
 - (f) devise and initiate as far as may be practicable means to prevent or eliminate wasteful, unnecessary or unhygienic methods, practices, costs or charges in connection with producing, marketing or using the commodity and any other product with which the board is associated,
 - (g) enter into agreements for the use, within New South Wales or elsewhere, of any trade mark of which it is, or is entitled to be, registered as proprietor, and
 - (h) publish reports, information and advice concerning the producing, marketing or use of the commodity or any other product with which the board is associated.
- (2) Without limiting any other of its functions, a board may—
- (a) enter into agreements with any person for or in connection with its functions, including agreements for the carrying out of works or the performance of services or the supply of goods or materials in connection with any of its functions, and
 - (b) enter into agreements with any person for the use of any of the equipment, machinery or facilities of the board for a purpose not itself otherwise connected with the functions of the board.
- (3) Where necessary, and without limiting any other provision of this Act, a board may return, destroy or otherwise dispose of any of the commodity.
- (4) Any of the functions of a board may be exercised—
- (a) by the board,
 - (b) by any affiliate of the board, or
 - (c) by the board or such an affiliate, or both, in a partnership, joint venture or other association with other persons or bodies.
- (5) For the purpose of exercising its functions, a board may—
- (a) join in the formation of any company to be incorporated, and
 - (b) purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, any company.

- (6) A board shall not do any of the things mentioned in subsection (5) otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister.
- (7) An affiliate of a board shall not, except with the approval of the Minister, engage in any activities which the board may not engage in.
- (8) If any function of a board may be exercised only with an approval under this Act, the function requires the same approval when exercised under an arrangement, or by a company, or in a partnership, joint venture or other association, as referred to in this section.
- (9) A board may exercise any of its functions under this Act, whether or not the function is exercised in, or the thing in respect of which the function is exercised is in or of or produced in, the area of the board or New South Wales.
- (10) In this section, **affiliate**, in relation to a board, means—
 - (a) a company in which the board has a controlling interest by virtue of its shareholding, or
 - (b) a company whose memorandum and articles of association provide that any or all of the directors of the company shall be persons who are, or who are nominated by, persons for the time being holding office as members of the board.

55 Miscellaneous provisions

- (1) This section applies to the following functions of a board—
 - (a) its functions in relation to the commodity or any other primary product under sections 46 and 49,
 - (b) its function as agent under section 52 or 53,
 - (c) such other of the board's functions as may be prescribed.
- (2) In so far as a board keeps accounts relating to any of its functions to which this section applies, the board shall keep separate accounts in respect of each such function.
- (3) Costs, charges and expenses incurred by a board in exercising any function to which this section applies, including such share of the general overheads of the board as the board thinks fair and proper, shall be met out of any commission or other remuneration received by the board, or out of a reserve created by the board under Part 6, in connection with the function.
- (4) Any mortgage, charge, lien, pledge, interest or trust given or created by or on behalf of a board in respect of, or in respect of financial accommodation obtained in

connection with, any function to which this section applies, is, to the extent to which it is given or created in respect of any of the commodity vested in the board by the operation of this Act, and whether given or created before or after the commodity became so vested, null and void.

Division 2 Vesting of commodities in boards

56 Vesting of commodity in board

- (1) Where a product has been declared a commodity and a board has been constituted in respect of the commodity, the Governor, by proclamation, may—
 - (a) declare—
 - (i) that the commodity shall forthwith, upon the date of publication of the proclamation in the Gazette or on and from a later date specified in the proclamation, or upon fulfilment of such conditions as are specified in the proclamation, be divested from the producers thereof and become absolutely vested in and be the property of the board, and
 - (ii) that upon any of the commodity coming into existence within a time specified in the proclamation or in any subsequent proclamation it shall become absolutely vested in and be the property of the board, and
 - (b) make such further provision as will enable the board effectively to obtain possession of the commodity as owner and to deal with the commodity as may be deemed necessary or convenient in order to give full effect to the objects and purposes for which the board is constituted.
- (2) Upon the date of publication of the proclamation under subsection (1), or on and from the date specified in the proclamation, or upon fulfilment of the conditions specified in the proclamation, as the case may require, the commodity is absolutely vested in and is the property of the board.
- (3) Subsections (1) and (2) do not apply to a commodity referred to in section 45 (3), but upon delivery of any such commodity in accordance with the relevant arrangement, the commodity is, unless the arrangement otherwise provides, absolutely vested in and is the property of the board.
- (4) Any of the commodity vested in a board by the operation of subsection (2) or (3) and accepted by the board is so vested freed from all mortgages, charges, liens, pledges, interests and trusts affecting it, and the rights and interests of every person in the commodity are converted into a claim for payment for the commodity so accepted.
- (5) A proclamation under this section may—
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,

- (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by the relevant board or by any other specified person or body,
- or may do any combination of those things.

57 Exemption by board

- (1) A board may, in such manner, in such cases and on such terms and conditions as it thinks fit or as are prescribed, exempt (either generally or in any particular case or class of cases) from the operation of section 56—
 - (a) such small producers of the commodity as the board thinks fit,
 - (b) sales of the commodity direct from producers to consumers, processors, merchants or retail vendors,
 - (c) such portion of the commodity as the producer may require for the producer's own use for food for the producer's family or livestock, or for seed, or for other prescribed purposes, and
 - (d) such other sales and purchases or receipts of the commodity as may be prescribed.
- (2) The board's decision as to whether any specified person, article or thing falls within the limits of any such exemption is final.
- (3) The board may revoke any such exemption by notice in writing signed by the secretary or other authorised officer of the board. The notice—
 - (a) in the case of an exemption applying in relation to a specified producer or producers—is to be given to the producer or producers, or
 - (b) in any other case—is to be published in the Gazette and in such other manner as is approved by the Minister having regard to the object of bringing notices of that kind to the attention of any persons directly affected by the relevant revocations.
- (4) An exemption may be granted under this section on a condition that requires payment to the board of such amounts of money as are specified or referred to in the condition.
- (5) Notwithstanding subsection (1), where an exemption is granted on a condition referred to in subsection (4) and an amount of money specified or referred to in the condition has not been paid prior to the sale of the commodity—
 - (a) the exempted producer shall be deemed to act as agent for the board in respect of the portion of the commodity which on sale realizes an amount of money equal to that required to be paid to the board in accordance with the condition, and

(b) section 56 shall be deemed to remain operative in respect of that portion of the commodity,

until payment, or recovery under subsection (6), of the amount of money specified or referred to in the condition.

- (6) So much of any amount of money realized by a producer acting as agent for the board under subsection (5) as does not exceed the amount of money owed to the board pursuant to a condition referred to in subsection (4) may be recovered by the board as a debt due in any court of competent jurisdiction.
- (7) Nothing in subsection (5) affects the relationship between a producer referred to in that subsection and any person to whom the commodity concerned is sold.
- (8) Without limiting subsection (1), sales of the commodity to an authorised buyer for that commodity are, by operation of this subsection, exempt from the operation of section 56.

58 Avoidance of contracts for sale of commodity

- (1) Every contract, whether made before or after the commencement of this section, or provision in any such contract, so far as it relates to the sale of a commodity the subject of a proclamation under section 56 (1) whether or not the commodity has come into existence when the contract was made, is and shall be deemed to have been void and of no effect as from the date upon which the contract was made.
- (2) Any provision in a contract, being a provision referred to in subsection (1), shall be deemed to be severable.
- (3) Any transaction or contract with respect to the commodity which is the subject-matter of any contract or provision of a contract declared by this section to be void shall also be void and of no effect, and any money paid pursuant to any such contract or provision or to any such transaction shall be repayable.
- (4) This section does not apply to a contract entered into by the board or a contract declared by the board to be a contract to which this section does not apply.

59 Remedy against board confined to claim for account

- (1) Subject to this section, no proceedings at law or in equity shall be brought against a board or any person acting under its authority by any person claiming to be entitled under any bill of sale, mortgage, charge, lien (including any lien under the [Liens on Crops and Wool and Stock Mortgages Act of 1898](#) or the [Co-operatives Act 1992](#)) or other encumbrance over, of or upon the commodity delivered to, and accepted by, the board, or claiming to be the true owner of the commodity, as against the person who delivered the commodity.

- (2) Any person who, but for subsection (1), would have been entitled to bring any such proceedings may adopt the delivery of any of the commodity to a board as a delivery thereof by the person to the board, and may claim accordingly for an account of the payments due in respect thereof, and recover the amount due in any court of competent jurisdiction as a debt.
- (3) Notwithstanding anything in the *Liens on Crops and Wool and Stock Mortgages Act of 1898* or any other Act, or any rule of law to the contrary, any such person shall not be entitled to make any such claim for an account of the payments due in respect of the commodity, or any part of those payments, unless the person has given prior notice in writing to a board in the form and containing the particulars prescribed of the bill of sale, mortgage, charge, lien or other encumbrance, or the claim of ownership, and then only for such part of such money as has not been paid to any other person at the time of the receipt by the board of the notice.

Division 3 Delivery of commodities to boards

60 Delivery of commodity

- (1) The commodity vested in a board by section 56 (2) shall be delivered by the producers to the board, or an authorised agent or authorised buyer, at or within such times, at such places, and in such manner as the board may by public notice or in a particular case in writing direct, or as may be prescribed by regulation.
- (2) A producer who supplies, sells or delivers any of the commodity vested in the board by section 56 (2) to a person other than the board, or an authorised agent or authorised buyer, is guilty of an offence against this Act.
- (3) A person—
 - (a) who buys or receives any of the commodity that is supplied, sold or delivered in contravention of subsection (2), or
 - (b) who buys by wholesale any of the commodity at a price other than the price fixed in respect of the commodity by the board,is guilty of an offence against this Act.
- (4) In proceedings for an offence under subsection (3) (a), it is a defence if it is established that the defendant did not know, and could not reasonably have been expected to have ascertained, that the commodity was supplied, sold or delivered in contravention of subsection (2).
- (5) In proceedings for an offence arising under subsection (3) (b), it is a defence if it is established that the defendant did not know, and could not reasonably have been expected to have ascertained, that the price was not that fixed by the board.

- (6) In the event of an inconsistency, a regulation referred to in subsection (1) prevails over a notice or direction so referred to.

61 Acceptance of commodity

- (1) A board shall not refuse to accept from any producer any of the commodity which is vested in it by section 56 (2) and which conforms to the applicable standards of quality or grade and which is delivered to it in accordance with this Act.
- (2) A board may accept from any producer any of the commodity that does not conform to the applicable standards of quality or grade, and may deal with it in such manner as it thinks appropriate.

62 Revesting of commodity if not accepted

Where—

- (a) a board refuses, for any reason (whether lawful or unlawful), to accept any of the commodity after tender of delivery to it in accordance with this Act, or
- (b) any of the commodity becomes exempted from the provisions of this Act vesting the commodity in the board,

that part of the commodity which the board refuses to accept or which is exempted shall revert in the person who would have been the owner of the commodity, but subject to all mortgages, charges, liens, pledges, interests and trusts that would have affected the commodity, if this Part had not applied to the commodity.

63 Duty to give notice of encumbrances

- (1) Every person delivering any of the commodity to the board which is subject to any bill of sale, mortgage, charge, lien or encumbrance or in respect of which the person has entered into any contract in derogation of the person's title to supply the commodity as the absolute owner thereof, and whether the bill of sale, mortgage, charge, lien, encumbrance or contract was made before or after the commencement of this section, shall, upon delivering the commodity to the board, give to the board a notice in writing of the bill of sale, mortgage, charge, lien, encumbrance or contract.
- (2) Any person wilfully guilty of a failure to comply with the provisions of this section is guilty of an offence against this Act.

Division 4 Payment for vested commodities

64 Payments

- (1) A board shall, subject to this Act, make payments to producers of the commodity for the commodity delivered to, and accepted by, the board in accordance with this Act, at such rates and in such instalments (if any) as the board may determine.

- (2) Any payment to producers for any of the commodity (not being any of the commodity that has not vested in the board) shall, in respect of any of the commodity of the same quality or grade delivered to the board during such periods as may be prescribed (or, if not prescribed, as may be determined by the board), be made, as nearly as possible, at a uniform rate, based on the proceeds of the sale of the commodity so delivered and such other matters as the board may determine (but excluding any credits or debits arising in respect of the board's activities under sections 46, 49, 52 and 53 and such other of the board's activities as may be prescribed).
- (3) Notwithstanding subsection (2)—
- (a) the board may, if it is satisfied that the circumstances warrant its doing so, make different payments for any of the commodity produced in different districts,
 - (b) the board may, with the approval of the Minister or in accordance with the regulations, make different payments for any of the commodity according to other factors, and
 - (c) the board may adjust any amount payable to a particular producer, having regard to other amounts owing to or by the producer and other factors that are, in the opinion of the board, relevant.
- (4) In determining rates of payment under this section, the board may take into account, and make suitable deductions for—
- (a) expenditure incurred in marketing, returning, destroying or otherwise disposing of the commodity,
 - (b) the costs, charges and expenses incurred by the board in the administration by the board of this Act,
 - (c) any reserves created by the board, and
 - (d) any other matters that are, in the opinion of the board, relevant or that are prescribed.
- (5) Notwithstanding anything in this section, but subject to the regulations, a board may, out of the proceeds of the sale of the commodity delivered to the board during any period referred to in subsection (2), deduct amounts for the purpose of liquidating any liability incurred for any previous period or for any other purpose that is prescribed or approved by the Minister.
- (6) The board's decision as to the quality and grade of the commodity, the method of determining any adjustments to be made and the amounts thereof shall be final and conclusive.
- (7) Nothing in this section requires the board to make any payments for any of the

commodity that does not conform to the applicable standards of quality or grade.

- (8) Where, at the end of a period referred to in subsection (2), there remains unsold any portion of the commodity delivered to the board during that period, the board may—
- (a) determine an amount as being the market value of that portion as at the end of that period,
 - (b) make such adjustments in the accounts of the board as will result in a credit being made in respect of that period of an amount equal to that market value and a corresponding debit being made in respect of the subsequent such period, and
 - (c) thereafter treat that portion as having been delivered to the board in that subsequent period.
- (9) The board shall not do any of the things mentioned in subsection (8) otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister.

65 Schemes for payments

- (1) At the request of a board, the Minister may, from time to time, approve schemes proposed by the board and making provision for or with respect to the variation of the basis on which payments are to be made under section 64 in respect of any of the commodity delivered to the board.
- (2) A scheme shall apply in respect of any of the commodity specified or described therein and delivered to the board during or covering a period of time that is—
- (a) referred to in section 64 (2), and
 - (b) specified in the scheme.
- (3) Where, during the period of time specified in a scheme, any of the commodity is delivered to the board, the board shall make payments under section 64 in respect of that commodity on the basis prescribed by that section as varied by or under the scheme.
- (4) The Minister may—
- (a) cancel or vary a scheme in accordance with a request made by the board in that behalf, or
 - (b) cancel a scheme without any request having been made by the board in that behalf, if the Minister gives the board at least 3 months' notice of intention to do so.
- (5) If any payments have been made in accordance with a scheme, the scheme may be cancelled only as from the commencement of a later season in respect of which no

payments have been made in accordance with the scheme.

(6) A scheme, and any variations thereof under this section, shall be in writing.

(7) In this section (other than subsection (1))—

scheme means a scheme approved under subsection (1).

the board, in relation to a scheme, means the board at whose request the scheme was approved under subsection (1).

66 Board not liable for payments made in good faith

Where a board in good faith and without negligence has made any payment—

- (a) to a producer delivering or causing to be delivered any of the commodity to the board or any person acting under its authority,
- (b) to any person entitled or claiming to be entitled through such a producer, or
- (c) to any person on the order of such a producer or of a person referred to in paragraph (b),

the board shall not be answerable to any person in respect of the payment for the commodity or any part thereof, or in any action or other proceedings, claim or demand whatever for damages or otherwise.

67 Board protected in certain cases

- (1) If, before receiving notice of a claim to any payment for any of the commodity vested in a board or to the chose in action or any part thereof the subject-matter of any such payment, the board has in good faith and without negligence made that payment, in whole or in part, in accordance with the provisions of this Division, the board shall not, to the extent to which it has made that payment, incur any liability to the true owner of the commodity or chose in action or any part thereof or to any person claiming through, under or in trust for the true owner.
- (2) This section does not in any way prejudice or affect any rights inter se of any parties claiming adversely to one another to be entitled whether at law or in equity to the commodity or chose in action the subject-matter or part of the subject-matter of any claim for payment.
- (3) In any proceedings taken in any court by any such person in respect of any such commodity or chose in action or part, the board may plead this section as a defence to the proceedings.

Division 5 Special provisions relating to rice

67A Definition

In this division—

Board means the Rice Marketing Board for the State of New South Wales.

67B Exclusion of rice grown in Northern Rivers region from application of Act

- (1) This Act does not apply to rice cultivated and harvested in the excluded area.
- (2) The area for which the Board is constituted is taken not to extend to the excluded area.
- (3) The Board must wind up its affairs in relation to the excluded area.
- (4) Section 60(2) does not apply to a producer of rice in the excluded area.
- (5) Section 60(3) does not apply to a person who buys or receives rice from a producer of rice in the excluded area.
- (6) In this section—

excluded area means the local government areas of Ballina, Byron, Clarence Valley, Kyogle, City of Lismore, Richmond Valley and Tweed.

67C End of rice vesting period and dissolution of Board

- (1) Despite an earlier proclamation in force immediately before this section commences, all rice vests in and is the property of the Board until 30 June 2025 only.
- (2) On and from 1 July 2025—
 - (a) rice ceases to be a primary product to which this Act applies, and
 - (b) the Board must take all reasonable steps to wind up its affairs before 1 July 2026.
- (3) Section 35(3), (5) and (6) apply in relation to the dissolution of the Board as if a reference to a proclamation of the Governor were a reference to an order of the Minister.
- (4) If the Board is not dissolved before 1 July 2026, the Minister must table a report on the dissolution in each House of Parliament within 3 months of that date.

67D Functions of Board

Schedule 6 contains provisions about the functions of the Board.

Part 4 Constitution of marketing committees

Division 1 Constitution of committee

68 Constitution of committee and declaration of commodity

- (1) The Governor may, by proclamation—
 - (a) declare that section 69 applies for the purpose of constituting a committee, with a specified corporate name, for a specified primary product and in relation to a specified area, and
 - (b) declare that the product is a commodity for the purposes of this Act.
- (2) A proclamation under this section may be made only if—
 - (a) a proclamation for a poll is published under section 81, and
 - (b) votes are cast in the poll by a majority of the persons who are enrolled in the relevant roll for the poll, and
 - (c) a majority of the votes cast at the poll are in favour of the making of the marketing order to which the poll relates.

69 Constitution of committee

- (1) Where a proclamation under section 68 takes effect in relation to a committee, there is hereby constituted a corporation under the corporate name specified in the relevant proclamation, for the primary product so specified and in relation to the area so specified.
- (2) A committee shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (3) The members of a committee shall be appointed by the Governor.
- (4) A committee shall consist of the number of members specified in the relevant marketing order, and appointments shall be made in accordance with the relevant provisions of the order.
- (5) The members of a committee shall, subject to the provisions of the relevant marketing order, be nominated for appointment by the Minister.
- (6) A committee does not, for any purpose, represent the Crown.
- (7) A committee—
 - (a) has perpetual succession,
 - (b) shall have a common seal,

- (c) may take proceedings, and be proceeded against, in its corporate name,
- (d) subject to this Act, may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property, and
- (e) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the committee is constituted.

(8) Schedule 2 has effect with respect to the members of a committee.

(9) Schedule 3 has effect with respect to the procedure of a committee.

70 Committee may employ staff

- (1) For the purpose of enabling it to exercise its functions, a committee may employ such staff and engage such consultants as it thinks fit.
- (2) With the approval of the Minister and upon such terms and conditions as are agreed upon, a committee may make use of the services of any person employed in the Department.
- (3) With the approval of the other authority and upon such terms and conditions as are agreed upon, a committee may make use of the services of any of the staff of another authority.

71 Change of name of committee

- (1) The Governor may, at the request or with the consent of a committee, by proclamation, change the corporate name of the committee.
- (2) No such change of name of a committee affects any rights or obligations of the committee or renders defective any legal proceedings instituted or to be instituted by or against the committee, and any legal proceedings may be continued or commenced by or against the committee by its new name that might have been continued or commenced by or against the committee by its former name.

72 Committee may control one or more commodities

A committee may be constituted under this Act for one or more commodities.

Division 2 Winding up and dissolution of committee

73 Winding up and dissolution

- (1) Where a marketing order ceases to have effect or is revoked, the committee to which the order relates shall proceed to wind up its affairs under the order.
- (2) Notwithstanding subsection (1)—

- (a) the Governor may, by proclamation, appoint any person to be liquidator for the purpose of the winding up, and
 - (b) the liquidator may, for that purpose, on behalf and in the name and as the act and (where necessary) under the seal of the committee, bring and defend such proceedings, and do and execute such acts, deeds and things, as may be necessary.
- (3) A proclamation under subsection (2) may revoke a declaration of a primary product as a commodity for the purposes of this Act, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.
- (4) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of, a liquidator appointed under this section, as certified from time to time by the Minister, shall be payable from the funds of the committee.
- (5) The members of a committee may not exercise any functions as members while a person holds office as liquidator of the committee.
- (6) Where the Minister is of the opinion that the affairs of a committee are wound up, the Governor may, by proclamation, dissolve the committee, and all money and other assets of the committee shall become the property of the State and shall be dealt with and disposed of as the Governor may direct.
- (7) A marketing order referred to in this section shall be deemed to continue in force for such period and to such extent as is necessary to enable the affairs of a committee to be wound up under this section.
- (8) This section does not apply to a marketing order to which section 73A applies.

73A Committees established under replacement marketing orders

- (1) This section applies to a marketing order (the **old marketing order**) that is revoked by a subsequent marketing order (the **new marketing order**), if the new marketing order—
- (a) is expressed to be made in replacement of the old marketing order, and
 - (b) relates to one or more of the commodities to which the old marketing order relates, and
 - (c) relates to the whole or part of the area to which the old marketing order relates, and
 - (d) declares that the committee constituted with respect to the old marketing order is to become, to the extent specified in the declaration, the committee constituted

with respect to the new marketing order.

- (2) On the revocation of the old marketing order, the committee constituted with respect to the old marketing order becomes, to the extent specified in the declaration referred to in subsection (1) (d), the committee with respect to the new marketing order.
- (3) The regulations may make provisions of a savings or transitional nature consequent on the operation of subsection (2) in relation to a committee, including provisions with respect to the disposal of the assets, rights and liabilities of the committee that relate to—
 - (a) commodities to which the old marketing order relates that are not commodities to which the new marketing order relates, and
 - (b) parts of the area to which the old marketing order relates that are not parts of the area to which the new marketing order relates.

Division 3 General provisions

74 Dismissal of committee

- (1) The Governor may, if of the opinion that circumstances have arisen rendering it advisable to do so, by proclamation, remove all the members of a committee from office, but they or any of them are eligible (if otherwise qualified) for re-appointment.
- (2) The Minister shall cause a report of, and the reasons for, the removal of the members of a committee under this section to be laid before each House of Parliament within 14 sitting days of that House after the date of publication of the proclamation under subsection (1) in the Gazette.
- (3) For the purposes of subsection (2), sitting days shall be counted, whether or not they occur during the same session.

75 Appointment of administrator

- (1) The Governor may, by proclamation, appoint a person to be administrator of a committee, where—
 - (a) all the members of the committee have vacated their offices or have been removed from their offices, or
 - (b) all or any of the members of the committee retain their offices and the Minister has certified to the Governor that the Minister is satisfied that it would be in the best interests of the committee that an administrator be appointed.
- (2) The administrator of a committee appointed under this section has all the functions of the committee, and any act, matter or thing done or omitted to be done by the administrator shall have the same effect as if done or omitted by the committee.

- (3) The Governor may, by proclamation—
 - (a) remove from office any person appointed as administrator under this section, and
 - (b) fill any vacancy in the office of administrator.
- (4) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of a committee by, an administrator appointed under this section, as certified from time to time by the Minister, shall be payable from the funds of the committee.
- (5) The members of a committee may not exercise any functions as members while a person holds office as administrator of the committee.

Part 5 Marketing of commodities: marketing orders

Editorial note—

For marketing orders under this Part, see the Historical notes at the end of this Act.

Division 1 Preliminary

76 Definitions

In this Part—

election means an election under this Part.

poll means a poll under this Part.

Division 2 Provisions relating to the making etc of marketing orders

77 Petition for marketing order

Where the Minister is satisfied, on representations made by petition to the Minister by producers of a primary product within an area, that a substantial number of the producers of that product within that area are in favour of a proposal that a marketing order of a specified kind should be made in respect of that product within that area, the Minister may direct that a report be published in relation to the proposal.

78 Report to be published in connection with proposal

- (1) As soon as practicable after a direction under section 77 is given in relation to a proposal referred to in the direction, the Secretary shall cause a report relating to the proposal to be published in such manner as the Secretary considers appropriate.
- (2) The report shall invite representations by any persons with respect to the proposal to which the report relates, and shall state the time by which and the manner in which representations are to be made.

79 Public meeting to be held

The Secretary shall arrange for and advertise a public meeting to be held in the area to which the proposal relates, for the purpose of enabling the proposal to be discussed.

80 Publication of draft marketing order

(1) Where—

- (a) a report relating to a proposal has been published under section 78,
- (b) the time, as stated in the report, by which representations are to be made on the proposal has elapsed,
- (c) a public meeting has been held under section 79 before the time mentioned in paragraph (b) has elapsed, and
- (d) the Minister has taken into consideration all representations made with respect to the proposal in accordance with section 78,

the Minister may cause a notice to be published in the Gazette setting out the terms of a draft marketing order.

(2) The draft marketing order may be different from the order as originally proposed.

81 Proclamation for poll as to making of a marketing order

(1) Where the Minister certifies to the Governor that a draft marketing order has been published in accordance with section 80, the Governor may, by proclamation, direct that a poll shall be taken of the persons entitled to vote at the poll on the question whether a marketing order should be made in or to the effect of that draft marketing order.

(2) A proclamation under this section may not be made after the commencement of section 5 of the *Agricultural Industry Services Act 1998*.

82 Making of marketing order

Where—

- (a) a notice setting out the terms of a draft marketing order is published in the Gazette under section 80, and
- (b) a proclamation for a poll is published under section 81, and
- (c) votes are cast in the poll by a majority of the persons who are enrolled in the relevant roll for the poll, and
- (d) a majority of the votes cast at the poll are in favour of the making of the marketing order,

the Minister may make a marketing order in or to the effect of the draft marketing order.

83 Marketing order not to be made with respect to certain commodities

A marketing order does not have effect with respect to any commodity so far as it is a commodity for which a board is constituted.

84 Provisions relating to marketing orders

(1) A marketing order—

- (a) shall take effect from the date of its publication in the Gazette or on and from a later date specified or referred to in the order, and
- (b) subject to this Act, may be rescinded, revoked, amended or varied by a subsequent order from time to time as occasion requires.

(2) Judicial notice shall be taken of every marketing order and of the date of its publication in the Gazette.

(3) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a marketing order have been complied with and performed.

(4) The rescission, revocation, amendment or alteration, whether in whole or in part, of any marketing order does not—

- (a) revive anything not in force or existing at the time at which the rescission, revocation, amendment or alteration takes effect, or
- (b) affect the previous operation of the order or any thing duly suffered, done or commenced under the order, or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the order, or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence against the order, or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such penalty, forfeiture or punishment may be imposed and enforced, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, as if the rescission, revocation, amendment or variation had not occurred.

85 Duration of marketing orders

(1) A marketing order shall state the period, not exceeding 4 years, for which it is to be

initially in force.

- (2) The Minister may cause a notice to be published in the Gazette stating that a marketing order specified in the notice will remain in force for a further period (not exceeding 4 years) specified in the notice, if—
 - (a) a petition for a poll is presented to the Minister before the day specified in the notice, as referred to in section 86, and
 - (b) votes are cast in the poll by a majority of the persons who are enrolled in the relevant roll for the poll, and
 - (c) a majority of the votes cast at the poll are in favour of the marketing order remaining in force for the further period.
- (3) The notice under subsection (2) shall be published at least 3 months before the commencement of the further period.
- (4) Where—
 - (a) a notice is published in the Gazette under subsection (2),
 - (b) a petition for a poll on the question of whether the marketing order should remain in force for the further period is presented in accordance with section 86, and
 - (b1) votes are cast in the poll by a majority of the persons who are enrolled in the relevant roll for the poll, and
 - (b2) a majority of the votes cast at the poll are in favour of the marketing order remaining in force for the further period, and
 - (c) the results of the poll are published before the commencement of the further period,

the marketing order shall, subject to this Act, remain in force for the further period, but shall otherwise cease to have effect at the beginning of the further period.

86 Petition and proclamation for poll as to continuance of marketing order

- (1) Where the Minister—
 - (a) is satisfied—
 - (i) on representations made by petition to the Minister by producers of the commodity to which a marketing order relates, that a substantial number of the producers desire that a poll should be taken on the question whether the marketing order should remain in force for a further period, and
 - (ii) that the petition was presented to the Minister before the expiration of the day

specified in the relevant notice under section 85, and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of the persons entitled to vote at the poll on the question whether the marketing order should remain in force for the further period.

(2) As soon as practicable after a proclamation under this section is published in the Gazette directing that a poll be taken, and before the day fixed for the taking of the poll, the Secretary shall cause a report relating to the question to which the poll relates to be published in such manner as the Secretary considers appropriate.

87 Amendment etc of marketing orders

The Minister may amend, vary or re-make a marketing order—

- (a) to make such alterations as are necessary or convenient to make in connection with any action taken under Part 4, or
- (b) to effect such alterations, not being alterations of substance, as the Minister thinks fit.

88 Invitation by Minister for representations on revocation of marketing order

- (1) The Minister may, by a notice published in the Gazette and in such other ways as the Minister thinks proper, invite representations by any persons on the question whether a particular marketing order should be revoked.
- (2) A notice published under this section shall state the time by which and the manner in which representations are to be made.
- (3) As soon as practicable after a notice is published under this section, the Secretary shall cause a report relating to the question to which the notice relates to be published in such manner as the Secretary considers appropriate.

89 Revocation of marketing order following representations

Where the Minister is satisfied, after taking into consideration all representations made in accordance with section 88 on the question whether a particular marketing order should be revoked, that the order should be revoked, the Minister may revoke the order.

90 Validity of marketing orders

- (1) The validity of a marketing order shall not be questioned in any legal proceedings except those commenced within 3 months after the date of its publication in the Gazette or within 3 months after the beginning of a further period referred to in section 85 for which the order is to remain in force.

- (2) The validity of a marketing order shall not be questioned in any legal proceedings commenced within 3 months after the beginning of a further period referred to in subsection (1) on any ground which could have been raised in legal proceedings commenced within a previous such period of 3 months relating to the order.
- (3) Nothing in subsection (1) or (2) prevents the questioning of the validity of a marketing order at any time in any legal proceedings on the ground that the order makes or contains provisions other than those which, by or under this or any other Act, it may make or contain.
- (4) A court shall not declare a marketing order or any provision of a marketing order invalid unless the court is of the opinion that the failure of the order or provision to comply with this or any other Act or the regulations made under this or any other Act is substantial.

Division 3 Contents of marketing orders

91 Principal contents of marketing order

- (1) A marketing order shall specify its objects, and the relevant committee shall, as far as practicable, have regard to those objects in the exercise of the functions conferred or imposed on it by or under this or any other Act, but nothing in this subsection authorises or requires the committee to contravene any provisions of this Act or of any other law.
- (2) A marketing order may make provision for or with respect to—
 - (a) the marketing of the commodity to which the order relates, and
 - (b) all acts, matters and things that are necessary or expedient to be done in connection with the marketing of the commodity.
- (3) Without limiting the generality of subsection (2), a marketing order may provide that—
 - (a) all or any of the things included in the marketing, collecting, cleaning, grading, packing, treating, transforming, carrying, storing, distributing (by wholesale or retail) or delivering of the commodity shall be done only by the committee, or its agents or employees, or only by a specified person or specified persons or a specified class of persons,
 - (b) all of the commodity that, during a specified period, is in the possession or comes into the possession of any person in the course, or for the purpose, of marketing, collecting, cleaning, grading, packing, treating, transforming, carrying, storing, distributing (by wholesale or retail) or delivering the commodity shall be handled and dealt with only under the instructions and with the authority of the committee, or shall be consigned or delivered only to specified persons or a specified class, or

specified classes, of persons,

- (c) certain classes of agreements with producers, processors and others engaged in the handling of the commodity are approved,
 - (d) the commodity may not be made the subject of any agreements except those that are approved as referred to in paragraph (c),
 - (e) any agreements referred to in paragraph (c) shall make particular provision with respect to the quality of the commodity, research and development relating to the commodity, marketing information relating to the commodity, the rate of flow of the commodity on to or through the marketing processes, the prohibition of unfair practices relating to the commodity, the prices to be paid for the commodity and other conditions of sale of the commodity, and
 - (f) a committee may exercise, in relation to the commodity, any specified function that may be exercised by a board in relation to a primary product for which it is or may be constituted.
- (4) A marketing order may impose a penalty not exceeding 20 penalty units for any contravention thereof.
- (5) A provision of a marketing order may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by the committee or by any other specified person or body,
- or may do any combination of those things.

92 Exemptions

- (1) Without limiting anything in section 91, a marketing order may make provision for or with respect to exempting—
- (a) any person or class of persons,
 - (b) any of the commodity or class of the commodity, or
 - (c) any act, matter or thing or class of acts, matters or things,
- from any or all of the provisions of the order.
- (2) A marketing order may provide that the committee's decision as to whether any person, any of the commodity or any act, matter or thing is within an exemption is

final.

- (3) The committee may revoke any such exemption by notice in writing signed by the secretary or other authorised officer of the committee. The notice—
 - (a) in the case of an exemption applying in relation to a particular producer or producers—is to be given to the producer or producers, or
 - (b) in any other case—is to be published in the Gazette and in such other manner as is approved by the Minister having regard to the object of bringing notices of that kind to the attention of any persons directly affected by the relevant revocations.
- (4) An exemption may be granted under this section on a condition that requires payment to the committee of such amounts of money as are specified or referred to in the condition.

93 Contents of marketing order relating to composition of committee

A marketing order may make provision for or with respect to the composition of the relevant committee and, in particular, for or with respect to—

- (a) the number of members of the committee,
- (b) whether any members are to be elected and, if so, how many are to be elected and by whom, and
- (c) any special qualifications that any members are required to hold.

94 Matters not to be dealt with in marketing order

A marketing order may not make provision for or with respect to—

- (a) prohibiting the production of any of the commodity, or
- (b) the automatic vesting or compulsory acquisition of any of the commodity in or by any person.

Division 4 Removal of commodity or area from control of marketing order

95 Operation of Division

- (1) This Division authorises—
 - (a) the removal of a commodity from the control of a marketing order, or
 - (b) the removal of an area from the control of a marketing order in relation to a commodity,by petition of producers of the commodity.

- (2) This Division does not authorise any removal referred to in subsection (1) unless the marketing order would, after the removal, continue to control a commodity in relation to an area.

96 Petition and proclamation for poll to remove commodity or area from control of marketing order

- (1) Where the Minister—

(a) is satisfied—

- (i) on representations made by petition to the Minister by producers of a commodity for which a marketing order is in force, that a substantial number of producers within the area in respect of which the order is in force desire that the commodity should be removed from the control of the order, and
- (ii) that this Division authorises the removal, and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of persons entitled to vote in respect of that commodity within that area on the question whether that commodity should be removed from the control of the order.

- (2) Where the Minister—

(a) is satisfied, on representations made by petition to the Minister by producers of a commodity for which a marketing order is in force, that a substantial number of the producers within the area in respect of which the order is in force desire that part of that area should be removed from the control of the order, and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of persons entitled to vote in respect of that commodity within that part of that area on the question whether that part of that area should be removed from the control of the order.

97 Removal of commodity or area from control of marketing order

- (1) Where the Minister—

(a) is satisfied that—

- (i) votes have been cast in a poll referred to in section 96 by a majority of the persons who are enrolled in the roll for the poll, and

(ii) a majority of the votes cast at the poll are in favour of the removal of a commodity or part of an area from the control of a marketing order, and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the relevant committee to wind up so much of its affairs as relates to the commodity or the part of the area, as the case may require.

- (2) Upon a proclamation under subsection (1) taking effect, the committee shall proceed to wind up its affairs to the extent that the direction so provides.
- (3) A proclamation under subsection (1) may revoke a declaration of a primary product as a commodity for the purposes of this Act or reduce the area for which a marketing order is in force, or both, as the case may require, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.

98 Other persons may also be polled

- (1) If the committee constituted with respect to a marketing order referred to in section 96 (1) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of persons entitled to vote in respect of each other commodity for which the order is in force on the question mentioned in that subsection.
- (2) If the committee constituted with respect to a marketing order referred to in section 96 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of persons entitled to vote in respect of the commodity within the other part of the area on the question mentioned in that subsection.
- (3) If the committee constituted with respect to a marketing order referred to in section 96 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of persons entitled to vote in respect of—
 - (a) the commodity within the other part of the area, and
 - (b) each other commodity for which the order is in force,on the question mentioned in that subsection.
- (4) A poll to be taken under this section on a particular question shall be taken on the same day as the poll taken under section 96 on the same question.
- (5) If the Governor directs that a separate poll be taken under this section, the Governor

may not give a direction under section 97 unless—

- (a) votes are cast in the poll by a majority of the persons who are enrolled in the relevant roll for the poll, and
- (b) a majority of the votes cast at the poll are in favour of the removal of the commodity or part of an area, or both, as the case requires, from the control of the marketing order.

(6) The poll to be taken under subsection (1) or (3) shall be a single poll of the persons referred to in that subsection.

Division 5 General provisions

99 Expiry and effect of petitions

- (1) A petition presented to the Minister for the purposes of this Part shall be deemed not to have been presented if no action has been taken pursuant to its presentation within 12 months after the date it was presented.
- (2) Nothing in this Part shall be construed as requiring anything to be done in consequence of the presentation of a petition to the Minister for the purposes of this Part.

100 Certain persons deemed to be producers for the purposes of petition

Where any primary product results from a process of manufacture or treatment of an article grown or produced by a farmer, orchardist, vegetable grower, grazier, poultry farmer, apiarist or dairyman, the grower or producer of the article shall, for the purpose of any petition under this Part, be deemed to be a producer of the product.

101 Provisions as to polls

- (1) The regulations may, subject to this Act, make provision for or with respect to the conduct of polls.
- (2) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, shall be the returning officer for the poll, and shall have and may exercise the functions conferred or imposed on the returning officer by the regulations in relation to the poll.
- (3) A roll of persons entitled to vote at a poll shall be prepared for the poll in the prescribed manner.
- (4) Notwithstanding anything in this Part, and if the regulations so provide—
 - (a) the persons entitled to vote in accordance with the regulations at a poll shall be the persons having such qualifications as may be prescribed, and

(b) only those persons may vote at the poll.

(5) The regulations may make provision for or with respect to fixing or postponing the date for the taking of a poll.

(6) The regulations may provide that—

(a) it is compulsory for a person, or a person of a prescribed class or description, to be enrolled or to apply for enrolment in the relevant roll,

(b) it is compulsory for persons enrolled in the relevant roll to vote at the poll,

(c) a person shall be deemed to be enrolled or to apply for enrolment in the relevant roll if a person of a prescribed class or description is so enrolled or so applies as the representative of the person, and

(d) a representative referred to in paragraph (c) shall, for the purposes of enrolment and of the poll, be deemed to be a person entitled to vote,

and the regulations may impose a penalty not exceeding 0.1 penalty unit for a breach of any such provision of the regulations.

102 Provisions as to elections

(1) The regulations may, subject to this Act, make provision for or with respect to the election of persons for appointment as the elected members of a committee.

(2) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, shall be the returning officer for an election, and shall have and may exercise the functions conferred or imposed on the returning officer by the regulations in relation to the election.

(3) A roll of persons entitled to vote at an election shall be prepared for the election in the prescribed manner.

(4) Notwithstanding anything in this Part, and if the regulations so provide—

(a) the persons entitled to vote in accordance with the regulations at an election shall be the persons having such qualifications as may be prescribed, and

(b) only those persons may vote at the elections.

(5) Notwithstanding anything in this Part, and if the regulations so provide—

(a) the persons entitled to be nominated as candidates for election as members of a committee shall be persons having such qualifications as may be prescribed, and

(b) a person's nomination is invalid if the person does not have those qualifications.

(6) The regulations may make provision for or with respect to fixing or postponing the

date for an election.

(7) The regulations may provide that—

- (a) it is compulsory for a person, or a person of a prescribed class or description, to be enrolled or to apply for enrolment in the relevant roll,
- (b) a person shall be deemed to be enrolled or to apply for enrolment in the relevant roll if a person of a prescribed class or description is so enrolled or so applies as the representative of the person, and
- (c) a representative referred to in paragraph (b) shall, for the purposes of enrolment and of the election, be deemed to be a person entitled to vote,

and the regulations may impose a penalty not exceeding 0.1 penalty unit for a breach of any such provision of the regulations.

(8) Voting at an election is not compulsory.

(9) To the extent that there is a failure to nominate a sufficient number of persons, or to the extent that an election fails for any other reason, the Governor may appoint a person or persons nominated by the Minister to be a member or members of a committee, and a person so nominated shall, on being so appointed, be deemed to be a person elected in accordance with the regulations.

Division 6 Special provisions relating to wine grape marketing orders

102A Definitions

In this Division—

NSW production area means the area constituted by the local government areas of Wentworth, Balranald and Wakool.

Victorian production area means the area in Victoria constituted by the Cities of Mildura and Swan Hill and the Shires of Mildura, Swan Hill and Kerang.

102B Making of marketing order

- (1) The Minister may, for the purposes of this Division, make a marketing order that deals with any or all of the following matters—
 - (a) the establishment of a Murray Valley Wine Grape Processing Industry Negotiating Committee, the membership of the Committee and the appointment of members,
 - (b) the establishment of the Committee as an interstate committee, if a similar body having similar functions has been established under Victorian legislation for the Victorian production area,

- (c) if a similar body having similar functions has been established under Victorian legislation for the Victorian production area, enabling the Committee to exercise any functions conferred on it by or under the Victorian legislation,
 - (d) the establishment of the Committee as a committee having functions that relate solely to the NSW production area, if such a body has not been established in Victoria,
 - (e) enabling the Committee to recommend prices to be paid by processors or wineries to producers for wine grapes grown in the NSW production area based on analysis of the commodity outlook for the wine industry as prepared by the Committee and to fix minimum terms of payment for wine grapes grown in the NSW production area (including times for payment and interest penalties for late payments),
 - (f) empowering the Committee to liaise and meet with any other bodies that have similar purposes,
 - (g) the procedure of the Committee,
 - (h) the financial year of the Committee,
 - (i) the funding of the Committee by wine grape producers and wine grape processors or wineries and other bodies involved in the industry,
 - (j) any matter that may be included in the order under a provision of Divisions 2-4 except a provision referred to in section 102D (1),
 - (k) making provision for or with respect to all acts, matters and things that are necessary or expedient to be done in connection with any of the matters specified in paragraphs (a)-(j).
- (2) The marketing order is to state the period, not exceeding 3 years, for which it is to be in force.

102C Prohibition on making of further marketing orders

The Minister must not make a further marketing order (whether or not for the purposes of this Division) that deals with any of the matters referred to in section 102B after the first such order has been made for the purposes of this Division.

102D Application of other provisions to marketing orders made for the purposes of this Division

- (1) A marketing order made for the purposes of this Division is taken to be a marketing order made under this Part. However, sections 77-82, 85, 86, 91 (2) and (3) and 93 do not apply to a marketing order made for the purposes of this Division.
- (2) In the application of the other provisions of this Part to a marketing order made for the

purposes of this Division—

- (a) wine grapes grown in the NSW production area are taken to be a commodity, and
- (b) a reference in those provisions to the relevant committee is to be read as a reference to the committee established under the marketing order.

Division 7 Special provisions relating to dried prunes industry marketing orders

102E Definition of “dried prunes”

In this Division—

dried prunes means dried prunes produced from the following varieties of prunes only: D’Agen, Robe de Sargent, Splendour, Old French (sometimes known as Goulburn Valley), Felleberg, Imperial, Sugar, and includes such dried prunes when packed in syrup.

102F Contents of marketing order

- (1) The Minister may, for the purposes of this Division, make a marketing order that deals with any or all of the following matters—
 - (a) the establishment of a Dried Prunes Industry Marketing Committee and the membership of the Committee and the appointment of its members,
 - (b) the establishment of the Committee as a committee having functions that relate solely to dried prunes,
 - (c) the functions of the Committee,
 - (d) the procedure of the Committee,
 - (e) the financial year of the Committee,
 - (f) the funding of the Committee by persons and bodies involved in the industry,
 - (g) any matter in relation to dried prunes that may be included in the order under a provision of Divisions 2 and 3 except a provision referred to in section 102H (1),
 - (h) making provision for or with respect to all acts, matters and things that are necessary or expedient to be done in connection with any of the matters specified in paragraphs (a)-(g).
- (2) Such a marketing order is to expire at the end of 31 December 1999.
- (3) The Minister may, on the recommendation of the Committee, revoke the marketing order with effect from an earlier date.

102G Prohibition on making of further marketing orders

- (1) The Minister must not make a further marketing order (whether or not for the purposes of this Division) that deals with any of the matters referred to in section 102F after the first such order has been made for the purposes of this Division, except as provided by this section.
- (2) The Minister may make a further marketing order but only if the further order merely amends or revokes the first such order made for the purposes of this Division.
- (3) Nothing in this section enables the Minister to extend the duration of the first marketing order made for the purposes of this Division.

102H Application of other provisions to marketing orders made for the purposes of this Division

- (1) A marketing order made for the purposes of this Division is taken to be a marketing order made under this Part. However, sections 77-82, 85, 86, 91 (2) and (3) and 93 do not apply to a marketing order made for the purposes of this Division.
- (2) In the application of the other provisions of this Part to a marketing order made for the purposes of this Division—
 - (a) dried prunes are taken to be a commodity, and
 - (b) a reference in those provisions to the relevant committee is to be read as a reference to the committee established under the marketing order.

Part 6 Financial provisions

Division 1 General

103 Financial accounting periods

- (1) The financial accounting period of each authority shall be such period as the Minister from time to time approves in respect of the authority.
- (2) A reference in any other Act or instrument under any other Act to a financial year shall be read and construed as, where the reference occurs in relation to a financial year of an authority, a reference to a financial accounting period of the authority.

104, 105 (Repealed)

106 Charges and fees

Where an authority supplies any service, commodity or other product, it may make, demand, levy and recover such charges and fees as may be prescribed or where no charge or fee is prescribed such charges and fees as may be fixed by it, subject to the maximum (if any) prescribed.

107 Costs incurred by Department etc on behalf of boards etc

- (1) A board or a committee shall, on receipt of a notice in writing signed by the Electoral Commissioner for New South Wales specifying the costs and expenses of any poll or election under this Act taken or held with respect to the board or committee or the primary product in respect of which the board or committee is or may be constituted, pay to the Electoral Commissioner an amount equal to the amount so specified.
- (2) An authority shall, on receipt of a notice in writing signed by the Minister specifying the costs or expenses incurred by the Minister or the Department (other than costs and expenses referred to in subsection (1)) in respect of anything done for or in connection with the authority, pay to the Minister an amount equal to the amount so specified.
- (3) Any amount required to be paid pursuant to subsection (1) or (2) shall be paid within such period as is specified in the notice or such further period as the Electoral Commissioner or the Minister, as the case may be, may allow.
- (4) If there is no board or committee to which a notice may be given under subsection (1), the costs and expenses of the poll or election shall be met by the Minister from money available for the purpose.

108 Reserves

An authority may, subject to and in accordance with any conditions for the time being determined by the Minister, create and use such reserves as it considers necessary or expedient for the purposes of this Act.

109 Retention of certain money owing by authorities

- (1) The regulations may make provision for or with respect to the retention by an authority of money owing by the authority to a person or class of persons, the manner in which any money so retained shall be accounted for in the books of the authority, the purposes for which any money so retained may be used and the payment of any money so retained to or at the direction of the person to whom it is owing.
- (2) Any such retention of money may be made with or without the consent of the person to whom it is owing, as provided by the regulations.

110 Financial accommodation

- (1) For the purposes of or for purposes connected with the exercise of its functions, an authority may obtain financial accommodation—
 - (a) from a bank, building society or credit union, or
 - (b) from any institution or person approved by the Minister with the concurrence of the Treasurer, or

(c) with the approval of the Minister and with the concurrence of the Treasurer, in any other manner.

(2) Subject to this Act, a board or committee may, in connection with any such financial accommodation, give such securities as will effectually place the commodity (or, in the case of a board, any other product with which the board is associated), or any part thereof, delivered or expected to be delivered to the board or committee, or any other assets of the board or committee, under the legal or other control of the bank, building society, credit union, institution or person providing the financial accommodation.

111 Investment of money of authority

(1) Money held by an authority may be invested—

(a) in any manner for the time being allowed by an Act for the investment of trust money,

(b) on deposit with the Treasurer,

(c) (Repealed)

(d) with the approval of the Minister and with the concurrence of the Treasurer, in any other manner.

(2) An approval or concurrence referred to in subsection (1) may be given for a particular case or for any class of cases.

112 Futures contracts

(1) Subject to subsection (2), a board or committee may, in relation to—

(a) a sale or proposed sale of the commodity by the board or committee, or

(b) a borrowing or raising of money by the board or committee or a proposed borrowing or raising of money by the board or committee (including a borrowing or raising of money by the board or committee by dealing with securities),

enter into and deal with contracts for hedging purposes at a futures market or at such other markets or with such other persons or institutions as may be prescribed.

(2) A board or committee shall not enter into or deal with futures contracts otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister.

(3) A futures contract shall be taken to be entered into or dealt with for hedging purposes if, and only if, the contract is entered into or dealt with for the purpose of—

(a) minimising the risks of variations in the price obtainable for the commodity under

a contract for the sale of the commodity that has been, or is to be, entered into by the board or committee, including risks of fluctuations in exchange rates, or

- (b) minimising the risks of variations in the costs of the borrowing or raising of money by the board or committee or a proposed borrowing or raising of money, including risks of fluctuations in exchange rates.

113 Loans to members of authorities

An authority shall not, whether directly or indirectly—

- (a) make a loan to a member of the authority, or
- (b) give a guarantee or provide security in connection with a loan made or to be made by another person to a member of the authority.

Division 2

113A-122 (Repealed)

Part 7 Public accountability

123 Review of authorities by Secretary

It is the duty of the Secretary to keep under review the activities of the authorities and to make regular reports on their activities.

124 Reports by authorities

An authority shall, when requested to do so by the Secretary, furnish to the Secretary a report containing such kind of information relating to the activities of the authority as the Secretary requests.

125, 126 (Repealed)

127 Annual meetings of authorities

- (1) It is the duty of each authority—
- (a) to convene and conduct public meetings in accordance with the regulations, at such annual or other intervals as may be prescribed or directed by the Minister, and
- (b) to circulate at or before any such meeting, as prescribed or directed by the Minister, such reports as may be prescribed or directed by the Minister.
- (2) An authority's annual meeting must be held within 6 months after the end of its financial accounting period or within such further period as may be directed by the Minister.

- (3) At least 21 days' notice shall be given, in accordance with the regulations, of an annual meeting of an authority.

128 Management audits

- (1) The Secretary shall, as approved or directed by the Minister, conduct management audits for the purpose of examining the activities of authorities and assessing the extent to which any such activities are being carried on in an efficient, economical and proper manner.
- (2) A management audit may, if the Minister so approves or directs, be conducted in relation to—
 - (a) the activities of one authority only,
 - (b) a part only of the activities of one authority, or
 - (c) the activities of more than one authority in related matters.
- (3) Except in so far as the Minister otherwise approves or directs—
 - (a) the Secretary shall consult with the authority concerned before commencing to conduct the management audit,
 - (b) the Secretary shall afford the authority an opportunity to nominate such number of members of the staff of the authority to participate in the conduct of the management audit as the Secretary determines, and
 - (c) any members of the staff of the authority so nominated may participate in the conduct of the management audit.
- (4) Any of the functions of the Secretary under this section may be exercised by—
 - (a) the Secretary personally,
 - (b) other persons employed in the Department approved for the purpose by the Secretary with the concurrence of the Minister, or
 - (c) consultants employed for the purpose with the concurrence of the Minister.

129 Powers of Secretary etc at management audit

- (1) The Secretary, or any person approved or employed as referred to in section 128 (4), may—
 - (a) enter the premises of any authority,
 - (b) require the production of and examine any documents in the custody of any member of any authority or any member of the staff of any authority, and

(c) require any such member to answer questions,
in connection with and for the purposes of a management audit.

(2) A person shall not—

- (a) delay, obstruct, hinder or impede a person in the exercise of any functions under this section,
- (b) fail or refuse to comply with a requirement under this section, or
- (c) provide in answer to a question under this section, any information that is false or misleading in a material particular.

130 Reports of management audits

The Secretary shall, as soon as practicable, prepare a report on the conduct and findings, and any recommendations, of a management audit.

131 Reports to be furnished

- (1) The Secretary shall furnish the Minister with a copy of each report under sections 123 and 130.
- (2) The Minister shall furnish a copy of any such report to the authority concerned, unless the Minister is satisfied that there are sufficient reasons for not doing so.

131A Annual reports by Secretary

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Secretary must prepare and forward to the Minister a report of—
 - (a) the Secretary's work and activities under this Act, and
 - (b) the activities of the authorities, and
 - (c) the operation and effect of any marketing orders, and
 - (d) such other matters or things as the Secretary thinks appropriate or as the Minister directs the Secretary to report on.
- (2) The Minister must cause each such report to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) A report under this section need not be separately prepared but may form part of the annual reporting information prepared for the Department under the [Government Sector Finance Act 2018](#).

Part 8 Statistics, marketing information and promotion

132 Statistics and marketing information

- (1) The Minister may, through the Department, cause such information to be collected and distributed with respect to the marketing of primary products as the Minister thinks appropriate.
- (2) Without limiting the generality of subsection (1), information referred to in that subsection may relate to—
 - (a) statistics and marketing information,
 - (b) forecasts and statistics relating to the supply of, demand for and marketing conditions relating to primary production and relevant for producers in New South Wales,
 - (c) prices, profits and costs involved in the production, marketing, collecting, cleaning, grading, transforming, packing, carrying, storing, distributing (by wholesale or retail) and delivering of primary products,
 - (d) the sources of supply of primary products and the location of markets for primary products,
 - (e) economy and efficiency in the distribution of primary products, so that needless waste and duplication may be so far as possible eliminated,
 - (f) farm business management, and
 - (g) such other matters relating to the production, marketing or consumption of primary products as the Minister thinks appropriate.
- (3) Information referred to in this section may be obtained pursuant to section 137 or from any other source.

133 Co-operation in marketing

The Minister may, through the Department, co-operate with, and encourage co-operation among, boards, committees, co-operatives registered under the [Co-operatives National Law \(NSW\)](#) and other persons and organisations, for the purpose of promoting and facilitating the marketing and consumption of primary products.

134 Dissemination of official information

- (1) The Minister may, from time to time, arrange with any person to publish, broadcast or otherwise disseminate information as to the current wholesale and retail prices of any commodity or other product, and may furnish any such person with any such information.

- (2) The information so furnished shall alone be published or broadcast as official information.
- (3) A person who publishes, broadcasts or otherwise disseminates information as to the current wholesale or retail prices of any commodity or other product as official information is, unless the information has been furnished by or at the direction of the Minister, guilty of an offence against this Act.

135 Functions of boards etc not affected

- (1) Nothing in this Part shall be construed as affecting the functions of a board or committee under this Act.
- (2) (Repealed)

Part 9 Inspection etc

136 Appointment of authorised persons

The Minister may appoint a person, or persons included in a class of persons, to be, for or in relation to all boards or committees or one or more specified boards or committees, an authorised person or authorised persons, as the case may be, for the purposes of a specified provision of this Act.

137 Information to be furnished

- (1) For the purposes of this Act, the Minister, the Secretary, a board or a committee may, by notice in writing served on the person to whom it is addressed either—
 - (a) personally, or
 - (b) by post at the person's last-known place of abode or business,require a person to furnish in writing to the Minister, the Secretary, the board or the committee, within the time specified in the notice, such information relating to any primary product or other product as is specified in the notice.
- (2) A person shall not, without reasonable excuse, fail or refuse to comply with a requirement under this section.
- (3) A person is not excused from furnishing information that the person is required to furnish under this section on the ground that the information might tend to incriminate the person or make the person liable to a penalty, but any information so furnished is not admissible in evidence against the person in proceedings other than proceedings for an offence against subsection (4).
- (4) A person shall not furnish under this section information that is false or misleading in a material particular.

- (5) A board or committee may not require information to be furnished under this section except in relation to the commodity.

138 Access to premises and motor vehicles

- (1) Subject to subsection (2), a member of the police force or an authorised person may, at all reasonable times, for the purpose of exercising any of the functions of an authorised person under this section, enter any premises where the member or person has reasonable grounds to believe that any of the commodity is stored, or any accounts, documents, books or papers relating to any of the commodity are kept.
- (2) Subsection (1) does not authorise any person to enter that portion of any premises that is used for residential purposes, without the consent of the occupier of that portion.
- (3) A member of the police force may, for the purpose of exercising any of the functions of an authorised person under this section, stop and detain any motor vehicle upon a public street or public place in which the member has reasonable grounds to believe that there is any of the commodity, or any accounts, documents, books or papers relating to any of the commodity.
- (4) A member of the police force or an authorised person may apply to an authorised officer for a search warrant if the member of the police force or authorised person has reasonable grounds for believing—
- (a) that there is on any premises any of the commodity that is the property of the board or committee or any of the commodity the delivery of which has been lawfully demanded by the board or committee under this Act, or
 - (b) that there are on any premises accounts, documents, books or papers relating to any of the commodity.
- (5) An authorised officer to whom an application is made under subsection (4) may—
- (a) if satisfied that there are reasonable grounds for doing so, and
 - (b) without affecting the generality of paragraph (a), if satisfied that the issue of the warrant is reasonably required for purposes of, or related to the operation of, this Act,
- issue a search warrant authorising the applicant to enter the premises for the purpose of exercising any of the functions of an authorised person under this section.
- (5A) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (6) The functions of an authorised person under this section are—

- (a) to search for and inspect any of the commodity,
 - (b) to demand that the occupier of any premises or, as the case may require, the person in charge of a motor vehicle, produce any accounts, documents, books or papers relating to the commodity,
 - (c) to search for, inspect, take extracts from and make copies of any accounts, documents, books or papers referred to in paragraph (b),
 - (d) to take possession of and remove any of the commodity that the authorised person reasonably suspects is the property of the board or committee or is any of the commodity the delivery of which has been lawfully demanded by the board or committee under this Act, and
 - (e) to make any inquiry that the authorised person considers necessary relating to any of the commodity.
- (7) A person shall not—
- (a) fail or refuse to produce any accounts, documents, books or papers referred to in subsection (6) (b), or
 - (b) make any false or misleading statement in answer to any inquiry referred to in subsection (6) (e).
- (8) On taking possession, as referred to in subsection (6) (d), of any of the commodity that, immediately before that taking, was not the property of the board or committee, the portion of the commodity so taken becomes the absolute property of the board or committee, freed from all mortgages, charges, liens, pledges, interests and trusts affecting it, and the rights and interests of every person in the commodity are converted into a claim for payment (in accordance with the regulations) for the commodity so taken.

- (9) In this section—

authorised officer has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

commodity includes any product that, if produced in the area of the board or committee, would answer the description of the commodity.

occupier, in relation to any premises, includes a person in charge of those premises.

139 Demanding name and place of abode

- (1) An authorised person who finds a person committing an offence against this Act or the regulations or who finds a person whom, on reasonable grounds, the authorised person suspects of having committed or attempted to commit any such offence, may

demand from that person his or her name and place of abode.

(2) A person who upon demand made under subsection (1)—

(a) fails or refuses to state his or her name or place of abode, or

(b) states a name that is not his or her name or a place of abode that is not his or her place of abode,

is guilty of an offence against this Act.

140 Offences

(1) A person shall not assault, delay, obstruct, hinder or impede an authorised person in the exercise of any functions conferred on the authorised person under this Act or the regulations.

(2) A person shall not—

(a) forge or counterfeit any written evidence of appointment of an authorised person,

(b) make use of any forged, counterfeited or false written evidence of such an appointment,

(c) personate an authorised person, or

(d) falsely pretend to be such an authorised person.

Part 10 Winding up, arrangements etc

141 Definitions

In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

Court means the Supreme Court of New South Wales.

liquidator, in relation to an authority, means the person appointed, or appointed provisionally, by the Court to be liquidator of the authority.

registered liquidator has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

142 Crown to be bound

This Part binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

143 Application of Part 5.7 of [Corporations Act 2001](#) of the Commonwealth

(1) The winding up of the affairs of an authority in New South Wales is declared to be an

applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.7 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications—

- (a) the provisions of the Part are to be read as if that Part extended to the winding up of the affairs of an authority in New South Wales,
- (b) the functions of winding up an authority's affairs may be exercised by a liquidator appointed by the Minister under subsection (2),
- (c) such modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) The Minister may appoint a person (whether or not the person is a registered liquidator) to be a liquidator in relation to the winding up of an authority's affairs for the purposes of subsection (1).
- (3) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if—
 - (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (4) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (3) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

144 Power to compromise with creditors

- (1) Where a compromise or arrangement is proposed between an authority and its creditors or any class of them, the Court may, on the application in a summary way of the authority or of any creditor of the authority, or, in the case of an authority being wound up, of the liquidator, order a meeting or meetings of the creditors or class of creditors to be convened in such manner, and to be held in such place or places within the State, as the Court directs and, where the Court makes such an order, the Court may approve the explanatory statement required by section 145 (1) (a) to accompany notices of the meeting or meetings.
- (2) A compromise or arrangement is binding on the creditors, or on a class of creditors, as the case may be, of the authority and, if the authority is being wound up, on the liquidator, if, and only if—
 - (a) at a meeting convened in accordance with an order of the Court under subsection (1), the compromise or arrangement is agreed to by a majority in number of the creditors, or of the creditors included in that class of creditors, present and voting, either in person or by proxy, being a majority whose debts or claims against the authority amount in the aggregate to not less than 75 per cent of the total amount of the debts and claims of the creditors present and voting in person or by proxy, or of the creditors included in that class present and voting in person or by proxy, as the case may be, and
 - (b) it is approved by order of the Court.
- (3) Where the Court orders 2 or more meetings of creditors or of a class of creditors to be held in relation to the proposed compromise or arrangement, the meetings shall, for the purposes of subsection (2), be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly.
- (4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.
- (5) Except with the leave of the Court, a person shall not be appointed to administer, and shall not administer, a compromise or arrangement approved under this Act between an authority and its creditors or any class of them, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person is—
 - (a) a mortgagee of any property of the authority,
 - (b) an auditor or an officer of the authority,
 - (c) an officer of any corporation that is a mortgagee of property of the authority, or

(d) a person who is not a registered liquidator.

(6) Nothing in subsection (5) (d) prohibits the appointment to administer a compromise or arrangement of a corporation authorised by any Act or any law of the State to administer such a compromise or arrangement.

(7) Any person or persons so appointed to administer a compromise or arrangement referred to in this section (whether by the terms of a compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement) are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of sections 425, 428, 432, 434 and 536 the *Corporations Act 2001* of the Commonwealth, subject to the following modifications—

(a) in relation the provisions of sections 425, 428, 432 and 434—the provisions apply in relation to that person or those persons as if—

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a receiver and manager, or as receiver and managers, of the property of the authority, and

(ii) a reference in any of those provisions to a receiver or controller, or to a receiver or controller of the property, of a corporation were a reference to that person or to those persons, and

(iii) a reference in any of those provisions to ASIC were a reference to the Minister for Agriculture, and

(b) in relation to the provisions of section 536—the provisions apply in relation to that person or those persons as if—

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a liquidator of the authority, and

(ii) a reference in that section to a liquidator were a reference to that person or to those persons, and

(iii) a reference in that section to ASIC were a reference to the Minister for Agriculture.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a

provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (8) An order of the Court made for the purposes of subsection (2) (b) does not have any effect until an office copy of the order is lodged with the Minister, and upon being so lodged the order takes effect, or shall be deemed to have taken effect, on and from the date of lodgment or such earlier date as the Court determines and specifies in the order.
- (9) Where a compromise or arrangement referred to in subsection (1) has been proposed, the authority—
 - (a) may instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and send their report or reports to the authority as soon as practicable, and
 - (b) if a report or reports is or are obtained pursuant to paragraph (a)—shall make the report or reports available at the principal place of business of the authority for inspection by the creditors of the authority at least 7 days before the date of any meeting ordered by the Court to be convened as provided in subsection (1).
- (10) Where no order has been made for the winding up of an authority and a compromise or arrangement has been proposed between the authority and its creditors or any class of them, the Court may, in addition to exercising any of its other powers, on the application in a summary way of the authority or of any creditor of the authority, restrain further proceedings in any action or other civil proceeding against the authority except by leave of the Court and subject to such terms as the Court imposes.

145 Information as to compromise with creditors

- (1) Where a meeting is convened under section 144, the authority shall—
 - (a) with every notice convening the meeting that is sent to a creditor, send a statement (in this section referred to as the ***explanatory statement***)—
 - (i) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the members of the authority, whether as members or creditors of the authority or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons, and
 - (ii) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the members of the authority and has not previously been

disclosed to the creditors, and

- (b) in every notice convening the meeting that is given by advertisement, include either a copy of the explanatory statement or a notification of the place at which and the manner in which creditors entitled to attend the meeting may obtain copies of the explanatory statement.

(1A) An explanatory statement is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Regulation 5.1.01 of, and Part 2 of Schedule 8 to, the *Corporations Regulations* of the Commonwealth, subject to the following modifications—

- (a) a reference in those provisions to a company is to be read as a reference to an authority,
- (b) a reference in those provisions to directors of a company is to be read as a reference to members of an authority,
- (c) a reference in those provisions to the registered office of a company is to be read as a reference to the principal place of business of an authority,
- (d) a reference in those provisions to ASIC is to be read as a reference to the Minister for Agriculture,
- (e) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) In the case of a creditor whose debt does not exceed \$200, subsection (1) (a) does not apply unless the Court otherwise orders but the notice convening the meeting that is sent to such a creditor shall specify a place at which a copy of the explanatory statement can be obtained on request and, where the creditor makes such a request, the authority shall forthwith comply with the request.
- (3) Where a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, every creditor entitled

to attend the meeting shall, on making application in that manner, be furnished by the authority free of charge with a copy of the explanatory statement.

- (4) Subject to subsection (6), where an authority contravenes or fails to comply with a requirement of this section, the authority and any member or officer of the authority who is in default are each guilty of an offence.
- (5) For the purposes of subsection (4), the liquidator of an authority shall be deemed to be an officer of the authority.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves that the default in complying with a requirement of this section is due to the refusal of any other person, being a member of the authority, to supply particulars of the person's interests for the purposes of the explanatory statement.

146 Regulations and rules

- (1) (Repealed)
- (2) Without limiting section 163, the regulations may make provision for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (3) Rules of court may be made under the [Supreme Court Act 1970](#) for the purposes of this Part.
- (4) Subsection (3) does not limit the rule-making powers conferred by the [Supreme Court Act 1970](#).
- (5) (Repealed)

147 Exercise of statutory functions

- (1) To the extent that a compromise or arrangement referred to in section 144 so provides—
 - (a) the person or persons appointed to administer the compromise or arrangement shall have and may exercise all or any of the functions conferred or imposed on the relevant authority by or under any other Part of this Act or under any Act other than this Act, and
 - (b) those functions may be exercised by the person or persons so appointed to the exclusion of the authority.
- (2) Any act, matter or thing done or omitted to be done, in the exercise of the functions referred to in subsection (1) by the person or persons so appointed, shall have the same effect and the same consequences as if done or omitted to be done by the relevant authority without the compromise or arrangement being in force.

148 Persons in default

Where a provision of this Part provides that a member or officer of an authority who is in default is guilty of an offence, the reference to the person who is in default shall, in relation to a contravention of, or failure to comply with, the provision, be construed as a reference to any member or officer of the authority (including a person who subsequently ceased to be a member or officer of the authority) who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or failure.

Part 11 Miscellaneous

149 Proclamations

A proclamation under this Act (other than under section 2)—

- (a) shall take effect from the date of its publication in the Gazette or on and from a later date specified or referred to in the proclamation, and
- (b) may, subject to this Act, be rescinded, revoked, altered or varied by a subsequent proclamation from time to time as occasion requires.

150 Approvals of Minister

An approval of the Minister under this Act shall be in writing and may, subject to this Act, be rescinded, revoked, altered or varied by instrument in writing from time to time as occasion requires.

151 Duties and liability of certain persons

- (1) It is the duty of a prescribed person at all times to act honestly in the exercise of his or her functions as a prescribed person.
- (2) It is the duty of a prescribed person at all times to exercise a reasonable degree of care and diligence in the exercise of his or her functions as a prescribed person.
- (3) In this section, **prescribed person** means—
 - (a) a member of an authority, or
 - (b) a member of the staff of an authority whose position is or is of a class or description prescribed for the purposes of this paragraph.

152 Offences by members and officers

- (1) Any prescribed person who, without lawful authority, demands or receives from any person any payment, gratuity or present in consideration of doing or omitting to do some act or thing pertaining to the prescribed person's office or employment under this Act or the regulations is guilty of an offence against this Act and liable to a penalty not exceeding 50 penalty units or to imprisonment for a term not exceeding 2

years, or both.

- (2) Any person who, without lawful authority, makes or gives to a prescribed person any payment, gratuity or present in consideration that the prescribed person will do or omit to do some act or thing pertaining to the prescribed person's office or employment under this Act or the regulations is guilty of an offence against this Act and liable to a penalty not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years, or both.
- (3) In this section, **prescribed person** means—
- (a) the Secretary or any other person employed in the Department,
 - (b) a member of or a member of the staff of an authority, or
 - (c) a person of a class or description prescribed for the purposes of this paragraph.

153 Secrecy

- (1) Subject to this Act, a person who is, or has at any time been, a prescribed person shall not, except to the extent necessary to exercise his or her functions under this Act or the regulations, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by reason of being or having been a prescribed person, or make use of any such information, for any purpose other than the exercise of his or her official functions.

Maximum penalty—50 penalty units or imprisonment for 2 years, or both.

- (2) Nothing in subsection (1) precludes a person from—
- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act or a prescribed Act,
 - (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under his or her notice in the exercise of his or her official functions, or
 - (c) producing a document or divulging or communicating information that is required or permitted by any Act, or any Act of the Commonwealth, to be produced, divulged or communicated, as the case may be.
- (3) In this section, **prescribed person** means—
- (a) the Secretary or any other person employed in the Department,
 - (b) a member of or a member of the staff of an authority, or
 - (c) a member of the police force, or other person, who has exercised any function under section 138, or

(d) a person of a class or description prescribed for the purposes of this paragraph.

154 Restrictions on certain dealings

- (1) Except as prescribed, a person who is, or has at any time been, a prescribed person shall not make improper use of information acquired by virtue of his or her position as such a prescribed person to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to an authority.
- (2) Except as prescribed, a prescribed person shall not make improper use of his or her position as such a prescribed person, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to an authority.
- (3) In this section, **prescribed person** means—
 - (a) the Secretary or any other person employed in the Department,
 - (b) a member of or a member of the staff of an authority, or
 - (c) a person of a class or description prescribed for the purposes of this paragraph.

Maximum penalty—50 penalty units or imprisonment for 2 years, or both.

155 Offences and penalty

- (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.
- (2) Any person who is guilty of an offence against this Act for which no penalty is otherwise expressly provided is liable to a penalty not exceeding 200 penalty units.

156 Proceedings for offences

- (1) All proceedings for offences against this Act or the regulations shall be disposed of summarily before the Local Court.
- (1A) Despite subsection (1), proceedings for an offence under section 51A (6) may be dealt with summarily before the Local Court or before the Supreme Court in its summary jurisdiction.
- (1B) If proceedings for an offence under section 51A (6) or 51B (1) are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units.
- (2) An information for an offence against this Act or the regulations may be laid in the name of a board or committee by an officer of the board or committee, authorised by the board or committee to lay informations on behalf of the board or committee.
- (3) Any prosecution instituted in the name of a board or committee shall, in the absence

of evidence to the contrary, be deemed to have been instituted by the authority of the board or committee.

- (4) Nothing in subsection (2) prevents an information for an offence against this Act or the regulations from being laid in any other manner.
- (5), (6) (Repealed)
- (7) Any pecuniary penalty recovered in proceedings for an offence against this Act or the regulations shall, if the information was laid in the name of a board or committee, be payable to the board or committee and shall form part of its income.

157 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, section 152 (2), each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence is actually committed.
- (4) This section does not apply to or in respect of an authority.

158 Evidentiary provisions

- (1) In any proceedings—
 - (a) any notification, requisition, direction, demand, order or other document in writing, purporting to be signed or made or sent by a board or committee, the Chairman or secretary of a board or committee or the Minister shall be judicially noticed,
 - (b) the production of a copy of the Gazette purporting to contain any proclamation, notification, direction or order under this Act shall be conclusive evidence of the matters contained therein, and that all steps necessary to be taken prior to the making of the proclamation, notification, direction or order have been duly taken,
 - (c) the averment on behalf of a board or committee that anything was or is a commodity or product to which the provisions of this Act are applicable, or was or is a commodity or product mentioned or included in any instrument or document, or that any place is a place in New South Wales, or that any person was or is a producer of a commodity or product, or was or is an authorised agent or authorised buyer, shall be prima facie evidence of that fact,

- (d) any document or anything purporting to be a copy or extract from any document containing any reference to any matter or thing alleged to be done in contravention of this Act or the regulations shall, upon proof that it was produced by or came from the custody of a person who is a defendant or respondent or is charged with an offence, or a responsible officer or a representative of that person, be admissible in evidence against that person and be evidence—
 - (i) of the matters and things thereby appearing,
 - (ii) that the document (or, in the case of a copy, that the original thereof) was written, signed, despatched or received by the persons by whom it purports to have been written, signed, despatched and received, and
 - (iii) that any such copy or extract is a true copy of or extract from the original of or from which it purports to be a copy or extract, and
- (e) a certificate purporting to be signed by the prescribed officer of a board or committee and certifying that on a specified date or during the whole of a specified period any person was or was not registered with the board or committee shall be admissible and be evidence of the matters specified in the certificate.

(2) Subsection (1) (b) does not apply to an order to which section 84 or 90 applies.

159 Service of notices

Any notice that is required to be given or that may be given by a board or committee under this Act or the regulations shall be deemed to have been duly given if sent by post in a letter addressed to the person to be served at the person's place of abode or business last known to the board or committee, and the notice shall be deemed to have been given at the time when a letter so posted should in the ordinary course of post be delivered.

160 Liability

No proceedings shall lie or be allowed by or in favour of any person against—

(a) the Crown, the Minister, the Secretary, an authority, a member of an authority or a person employed in the Department or an authority, or

(b) any person acting under the direction of the Minister, the Secretary or an authority,

in the execution or intended execution of this Act in respect of anything done bona fide under and for the purposes of this Act.

161 (Repealed)

162 Savings, transitional and other provisions

Schedule 4 has effect.

163 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to—
 - (a) any of the functions conferred or imposed on the Minister, the Secretary or a committee,
 - (b) the business, proceedings and meetings of a board or a committee,
 - (c) the signing of documents relating to a board or a committee,
 - (d) the custody and use of the common seal of a board or a committee,
 - (e) prescribing forms of returns and of statistics to be made and furnished in accordance with this Act and the contents thereof, and the persons (whether producers or not) by whom they shall be made, and the time and mode of making and furnishing them, and
 - (f) the certificates and other forms which are to be or may be used for the purposes of this Act.
- (3) Without limiting subsection (1), the regulations may make provision for or with respect to—
 - (a) any of the functions conferred or imposed on a board,
 - (b) the making and keeping of records by persons (whether producers or not), the inspection of those records and the production of those records in any legal proceedings,
 - (c) authorising a board or committee in any sale or agreement for sale of the commodity by the board or committee to any person to insert conditions and to fix a sum by way of liquidated damages for any breach of conditions (which damages shall be recoverable accordingly),
 - (d) ascertaining whether a commodity is of the required quality or grade and prescribing a standard therefor, and providing for an increase or decrease in the price otherwise payable to any producer or other person for any of the commodity delivered by the producer or any other person to a board or committee according to the quality or grade of the commodity,
 - (e) ascertaining whether a commodity is of the required quality or grade and prescribing a standard therefor so as to ensure that the commodity, whether it is

or has, at any time, been vested in a board and whether produced in New South Wales or elsewhere shall comply with prescribed standards of quality and grade when sold by wholesale or retail in New South Wales,

- (f) regulating within the area controlled by a board or committee—
 - (i) the collecting, cleaning, grading, packing, treating, carrying, storing, marketing, branding, distributing, supplying, selling and exporting by the board or committee or any other person, and
 - (ii) the delivery by or to the board or committee or by or to any other person, of any of the commodity, whether it was produced within the area controlled by the board or committee or not, whether the commodity was produced within New South Wales or elsewhere and whether the commodity is or was at any time owned by the board or committee or not,
- (g) prescribing periods of time in respect of which the computation of or accounting for the net proceeds of a commodity for which a board or committee is constituted,
- (h) the control and management and expenditure of the funds of an authority,
- (i) requiring the producers of a commodity produced within the area controlled by a board or committee, and authorised agents and authorised buyers for a board, to register and re-register with the board or committee at the prescribed times their names and such other particulars as may be prescribed, and requiring a producer on ceasing to produce the commodity to notify the board or committee thereof,
- (j) requiring such classes or descriptions of persons who buy or sell, as principal or agent, any of the commodity to register and re-register with a board or committee at the prescribed times their names and such other particulars as may be prescribed, and requiring any such person on ceasing to act as such a principal or agent to notify the board or committee thereof,
- (k) the publication of any particulars registered or notified as referred to in paragraph (i) or (j),
- (l) regulating within the area of a board the marketing, branding or stamping, storing or cold storing by any person of any of the commodity for the time being within the area of the board, whether the commodity was produced within the area of the board or not, whether the commodity was produced in New South Wales or not, and whether the commodity is or was at any time owned by the board or not,
- (m) the duties of care or precaution to be taken and methods to be used by a board or committee or any other person in the display, within the area of the board or committee, of any of the commodity for sale or in storage, treatment or custody of

any of the commodity held or offered for sale, whether in any of those cases the commodity was produced within the area of the board or committee or elsewhere, whether the commodity was produced in New South Wales or elsewhere, and whether the commodity is or was at any time owned by the board or committee or not, and

(n) establishing grades, classes or descriptions of any commodity.

(4) A regulation may impose a penalty not exceeding 10 penalty units and, in the case of a continuing offence, an additional penalty not exceeding 1 penalty unit for each day during which the offence continues, for non-compliance with or contravention of any regulation.

(5) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors,

(b) apply differently according to different factors of a specified kind, or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(6) Where the Minister is of the opinion that a proposed regulation relates to any of the matters in respect of which subsection (3) or section 109 relates and would, when made, apply with respect to a board or the commodity for which a board is constituted, the regulation may be made only on the recommendation of the board.

164 Authorisations for section 51 of [Competition and Consumer Act 2010 \(Cth\)](#) and Competition Code

(1) In this section—

authorise includes approve.

Competition Code means the *Competition Code of New South Wales*.

the Commonwealth Act means the [Competition and Consumer Act 2010](#) of the Commonwealth, as amended and in force from time to time.

(2) The object of this section is to specifically authorise certain things, or things of certain kinds, for the purposes of section 51 of the Commonwealth Act and the Competition Code, and this section has effect and shall be construed accordingly.

(3) The making by an authority, whether as principal or agent, of a contract, agreement or understanding relating to the marketing of a commodity or primary product—

- (a) that is, or is of a kind that is, prescribed for the purposes of this section, or
- (b) that is approved by the Minister,

and all conduct, whether as principal or agent, of the authority and all parties to the contract, agreement or understanding which relates to the proposed making of, negotiating for, making, and performance of any such contract, agreement or understanding, are hereby authorised for the purposes of section 51 of the Commonwealth Act and the Competition Code.

- (4) An authority is hereby authorised in the course of exercising the functions conferred upon it by this Act to do or omit to do, whether as principal or agent, any act or thing that is, or is of a kind which would, but for the authorisation conferred by this section, be a contravention of a provision of Part IV of the Commonwealth Act or the Competition Code.
- (5) Where authorisation is conferred by this section, the contract, arrangement or understanding so authorised is lawful and the authority and all parties to the contract, arrangement or understanding are authorised by force of this Act and whether as principal or agent to enter into it, and to engage in the conduct referred to in subsection (3).
- (6) Nothing in this section—
 - (a) authorises an authority to do or omit to do any act or thing that it would not be empowered to do or omit to do apart from this section and the Commonwealth Act and the Competition Code, or
 - (b) affects the operation of any provision of this Act, or of any other Act, that confers or imposes functions on an authority.
- (7) An approval under subsection (3) may be given subject to such conditions as the Minister determines.

165 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to the [Rice Marketing Amendment Act 2007](#).
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

166 Repeal of Act

The Governor may, by proclamation, repeal this Act if satisfied all boards and committees are dissolved.

Schedule 1 (Repealed)

Schedule 2 Provisions relating to members of authorities

(Sections 11 (9), 69 (8), 115 (6))

1 (Repealed)

2 Chairman and Deputy Chairman of authority

- (1) The members of an authority shall, whenever there is a vacancy in the office of Chairman of the authority, at the first meeting of the authority at which all the members are present, elect one of the members to be Chairman of the authority.
- (2) The members of an authority may, whenever there is a vacancy in the office of Deputy Chairman of the authority, at the first meeting at which all the members are present, elect one of the members to be Deputy Chairman of the authority.
- (3) If a Chairman or Deputy Chairman is not so elected, the Governor may appoint a member to be Chairman or Deputy Chairman of the authority.
- (4) A person who is a member and Chairman or Deputy Chairman of an authority shall be deemed to have vacated office as Chairman or Deputy Chairman if the person—
 - (a) is removed from that office under subclause (5),
 - (b) resigns that office by instrument in writing delivered to the authority, or
 - (c) ceases to be a member of the authority.
- (5) The members of an authority may, at a meeting of the authority at which all the members are present, remove a member of the authority from the office of Chairman or Deputy Chairman.
- (6) Subject to this Act, the Chairman or Deputy Chairman of an authority shall hold office as such for such period as may be prescribed, but is eligible (if otherwise qualified) for re-election.

3 Alternate members

- (1) The regulations may make provision for or with respect to the appointment, from time to time, of a person as an alternate member to act in the office of an elected member of an authority during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member.

- (2) The Minister may, from time to time, appoint a person as an alternate member to act in the office of a member of a board (other than an elected member) during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member.
- (3) The regulations may make provision for or with respect to the removal of any person from any office to which the person was appointed under subclause (1).
- (4) The Minister may remove any person from any office to which the person was appointed under subclause (2).
- (5) A person while acting in the office of a member of an authority is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (6) For the purposes of this clause, a vacancy in the office of a member of an authority shall be deemed to be an absence from office of the member.
- (7) In section 160, clauses 8 and 9 and Schedule 3—
 - (a) a reference to a member of an authority includes a reference to a person acting in the office of a member of an authority,
 - (b) a reference to the appointment of a member of an authority includes a reference to the appointment of a person to act in the office of a member of an authority, and
 - (c) a reference to the office of a member of an authority includes a reference to the office of a person appointed to act in the office of a member of an authority.

4 Terms of office

- (1) Subject to this Act, an elected member of an authority shall hold office for—
 - (a) the period of 4 years, or
 - (b) some other period determined in relation to the authority by the Governor by proclamation,specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.
- (2) Subject to this Act, a member of an authority (other than an elected member) shall hold office for such period not exceeding 4 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.
- (3) A period shall not be determined under subclause (1) (b) except in accordance with a request made by the relevant authority to the Minister.

5 Remuneration

A member of an authority is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

6 Filling of vacancy in office of member

- (1) In the event of the office of any member of an authority becoming vacant a person shall, subject to this Act, be appointed to fill the vacancy.
- (2) If a vacancy occurs in the office of an elected member of an authority otherwise than by reason of the expiry of the term of office for which the former member was appointed, the member appointed to fill the vacancy shall be appointed for the balance of the firstmentioned term of office.
- (3) If—
 - (a) a vacancy occurs in the office of an elected member of an authority otherwise than by reason of the expiry of the term for which the former member was appointed,
 - (b) it appears to the Minister that the member, if elected to fill the vacancy, would have a term of office of less than 12 months, and
 - (c) the authority concerned requests the Minister, by instrument in writing under the seal of the authority, that the election be dispensed with,the Governor may appoint a person to fill the vacancy on the nomination of the Minister, without an election being held, and the person so appointed shall be deemed to be an elected member.
- (4) A person may not be nominated for the purposes of subclause (3) unless the person would have been eligible to be elected to the vacancy had the election been held.

7 Casual vacancies

- (1) A member of an authority shall be deemed to have vacated office if the member—
 - (a) dies,
 - (b) absents himself or herself from 2 consecutive meetings of the authority of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the authority (which leave the authority is hereby authorised to grant) or unless, before the expiration of 2 weeks after the last of those meetings, the member is excused by the authority for being absent from those meetings,
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt

or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,

(d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act,

(e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable,

(f) resigns the office by instrument in writing addressed to the Minister, or

(g) (Repealed)

(h) is removed from office in accordance with this Act.

(2) The Governor may remove a member of an authority from office for incapacity, incompetence or misbehaviour.

(3) Without affecting subclause (2), the Governor may remove from office a member of an authority who—

(a) contravenes clause 8,

(b) has breached the duty imposed by section 151, or

(c) is convicted of any offence against this Act.

8 Disclosure of pecuniary interests

(1) A member of an authority who has a direct or indirect pecuniary interest—

(a) in a matter that is being considered, or is about to be considered, at a meeting of the authority, or

(b) in a thing being done or about to be done by the authority,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the authority.

(2) A disclosure by a member of an authority at a meeting of the authority that the member—

(a) is a member, or is in the employment, of a specified company or other body,

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or

a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

- (3) An authority shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the authority from time to time.
- (4) Nothing in this clause applies to or in respect of an interest of a member of an authority in a matter or thing of a prescribed class or description.
- (5) An authority may, by resolution, provide for the exclusion of a member of the authority from a meeting of the authority while any matter or thing in which the member has a direct or indirect pecuniary interest is under consideration.
- (6) A reference in this clause to a meeting of an authority includes a reference to a meeting of a committee or sub-committee of the authority.

9 Effect of certain other Acts

- (1) The provisions of the *Government Sector Employment Act 2013* do not apply to or in respect of the appointment of a member of an authority and a member of an authority is not, as a member, subject to those provisions.
- (2) Where by or under any other Act provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of member of an authority or from accepting and retaining any remuneration payable to the person under this Act as such a member.
- (3) The office of a member of an authority shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

Schedule 3 Provisions relating to procedure of authorities

(Sections 11 (10), 69 (9), 115 (7))

1 General procedure

The procedure for the calling of meetings of an authority and for the conduct of business at those meetings shall, subject to any procedure that is specified in this Act or prescribed by the regulations, be as determined by the authority.

2 Quorum

- (1) The relevant number of members of an authority, of whom at least 2, in the case of a board, must be nominated members of the board, shall form a quorum and any duly convened meeting of the authority at which a quorum is present shall be competent to transact any business of the authority and shall have and may exercise all the functions of the authority.
- (2) For the purposes of subclause (1), the relevant number of members is the next highest whole number above one-half of the number of members of the authority for the time being.

3 Presiding member

- (1) The Chairman of an authority or, in the absence of the Chairman, the Deputy Chairman of the authority or, in the absence of both, another member of the authority elected as chairman for the meeting by the members present shall preside at a meeting of the authority.
- (2) The person acting as chairman at any meeting of an authority shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

4 Voting

A decision supported by a majority of votes cast at a meeting of an authority at which a quorum is present shall be the decision of the authority.

5 Minutes

- (1) Each authority shall cause full and accurate minutes to be kept of the proceedings of each meeting of the authority.
- (2) Each board and committee shall submit to the Secretary a copy of the confirmed minutes of each meeting within 2 weeks after the day on which they were confirmed or within such other period as the Secretary may from time to time determine.

6 First meeting of authority

The Minister shall call the first meeting of an authority (being an authority constituted after the day appointed and notified under section 2 (2)) in such manner as the Minister thinks fit.

Schedule 4 Savings, transitional and other provisions

(Section 162)

Part 1 Preliminary

1A Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following—

Marketing of Primary Products Amendment Act 1995

Schedule 1 to the *Dried Fruits (Repeal) Act 1997*

Marketing of Primary Products Amendment (Marketing Orders) Act 1997

Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997

Marketing of Primary Products Amendment (Rice Marketing Board) Act 1998

Marketing of Primary Products Amendment (Rice Marketing) Act 2003

Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Act 2005

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

1 Definition

In this Part, **appointed day** means the day appointed and notified under section 2 (2).

2 Boards

- (1) The following boards shall be deemed to have been constituted as boards under this

Act—

- (a) The Barley Marketing Board for the State of New South Wales.
 - (b) The Central Coast (N.S.W.) Citrus Marketing Board.
 - (c) The Grain Sorghum Marketing Board for the State of New South Wales.
 - (d) The Murray Valley (N.S.W.) Citrus Marketing Board.
 - (e) The Oats Marketing Board for the State of New South Wales.
 - (f) The Oilseeds Marketing Board for the State of New South Wales.
 - (g) The Rice Marketing Board for the State of New South Wales.
 - (h) The Sheep Meats Marketing Board for the State of New South Wales.
 - (i) The Tobacco Leaf Marketing Board for the State of New South Wales.
 - (j) The Wine Grapes Marketing Board for the Shires of Leeton, Griffith, Carrathool and Murrumbidgee.
 - (k) The Yellow Maize Marketing Board for the State of New South Wales.
- (2) The boards deemed by subclause (1) to have been constituted under this Act are continuations of, and the same entities as, the respective boards constituted under the *Marketing of Primary Products Act 1927*.
- (3) Anything done or omitted to be done under the *Marketing of Primary Products Act 1927* in relation to a board referred to in subclause (1) shall have effect, in relation to the board, after the appointed day as if it had been done under this Act.
- (4) The reference in section 32 (3) to the constitution of a board pursuant to a proclamation under section 10 or 23 shall, in relation to a board referred to in subclause (1), be read and construed as a reference to the constitution of the board pursuant to a proclamation under the *Marketing of Primary Products Act 1927*.

3 Members of boards

- (1) The elected members of a board holding office under the *Marketing of Primary Products Act 1927* immediately before the appointed day—
- (a) shall be deemed to have been duly appointed under this Act as elected members of the board,
 - (b) shall, subject to this Act, hold office for the balance of their respective terms of office, and
 - (c) are eligible (if otherwise qualified) for re-appointment.

- (2) The members of a board (other than the elected members) holding office under the *Marketing of Primary Products Act 1927* immediately before the appointed day—
 - (a) shall be deemed to have been duly appointed under this Act as nominated members of the board,
 - (b) shall, subject to this Act, be deemed to have been appointed for a term that ends at the expiration of the period of 6 months commencing on the appointed day, and
 - (c) are eligible (if otherwise qualified) for re-appointment.
- (3) Notwithstanding anything in subclause (1) or (2), a member of a board holding office under the *Marketing of Primary Products Act 1927* immediately before the appointed day shall, if the member has attained the age of 70 years on or before the appointed day, be deemed to have vacated the office on the appointed day.

4 Elections and polls

- (1) Any election or poll to be conducted in relation to a board or proposed board within the period of 6 months commencing on the appointed day shall, except in so far as the regulations made under clause 9 otherwise provide, be conducted in accordance with the *Marketing of Primary Products Act 1927* and the regulations under that Act, as in force respectively immediately before the appointed day.
- (2) Nothing in subclause (1) authorises a person who is of or above the age of 70 years to be appointed as a member of a board.

5 General savings

Subject to this Act, anything done or omitted to be done under or for the purposes of the *Marketing of Primary Products Act 1927* shall be deemed to have been done or omitted to be done under or for the purposes of this Act.

6 Payments for commodities

- (1) The enactment of this Act does not affect any arrangements for the payment for any commodity delivered to a marketing board under the *Marketing of Primary Products Act 1927* including an arrangement pursuant to section 14 (6) of that Act.
- (2) Any scheme in force under section 14A of the *Marketing of Primary Products Act 1927* immediately before the appointed day shall be deemed to be in force under this Act.

7 (Repealed)

8 Existing regulations

Any regulations in force under the *Marketing of Primary Products Act 1927* immediately before the appointed day, shall, to the extent to which they could have been made under this Act, and subject to any amendments made by regulations under this Act and to take

effect from the appointed day, be deemed to have been made under this Act.

Part 3 Provisions consequent on enactment of [Marketing of Primary Products Amendment Act 1995](#)

9 Definition

In this Part, **the 1979 Act** means the [Wine Grape Processing Industry Act 1979](#).

10 Determinations of Wine Grape Processing Industry Negotiating Committees

- (1) The last determination of a Negotiating Committee or a Joint Negotiating Committee made or deemed to have been made under section 14 of the 1979 Act before its repeal continues in force until a recommendation is made under a marketing order made for the purposes of Division 6 of Part 5 as to the prices to be paid by processors or wineries for wine grapes.
- (2) The provisions of the 1979 Act relating to the effect and enforcement of determinations under section 14 of that Act continue in force during the period for which any such determination is continued in force by subclause (1) as if the 1979 Act had not been repealed.
- (3) In this clause, **determination** means a determination as to the minimum prices to be paid by processors (within the meaning of the 1979 Act) for wine grapes.

11 Wine Grape Processing Industry Negotiating Committees under repealed Act

- (1) A Negotiating Committee or a Joint Negotiating Committee constituted under the 1979 Act and in existence immediately before the repeal of that Act is dissolved on that repeal.
- (2) A person who held office as a member of such a Committee immediately before the repeal of the 1979 Act ceases to hold office on that repeal.
- (3) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

12 Wine Grape Processing Industry Arbitrator and inspectors under repealed Act

- (1) A person holding office as an Arbitrator or inspector within the meaning of the 1979 Act immediately before the repeal of that Act ceases to hold office on that repeal.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

13 Wine Grape Processing Industry Negotiating Committee under this Act

- (1) A Negotiating Committee established under a marketing order made for the purposes of Division 6 of Part 5 and in existence immediately before the order ceases to have

effect or is revoked is dissolved when the order ceases to have effect or is revoked.

- (2) A person who held office as a member of such a Committee immediately before the Committee was dissolved ceases to hold office on the dissolution of the Committee.
- (3) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.
- (4) Any assets of the Committee existing immediately before its dissolution are to be dealt with in accordance with the directions of the Minister.

Part 4 Provisions consequent on enactment of [Marketing of Primary Products Amendment \(Wine Grapes Marketing Board\) Act 1997](#)

14 Prices for sale of vested wine grapes

If, before the commencement of this clause, the Wine Grapes Marketing Board has set a price for which vested wine grapes that comprise the 1998 crop may be sold, the last price so set immediately before the commencement of this clause is taken to have been set under and for the purposes of clause 7 of Schedule 5 (as inserted by the [Marketing of Primary Products Amendment \(Wine Grapes Marketing Board\) Act 1997](#)).

Part 5 Provision consequent on enactment of [Marketing of Primary Products Amendment \(Marketing Orders\) Act 1997](#)

15 Amending Act does not apply to existing polls

- (1) The amendments made to sections 68 and 82 by the [Marketing of Primary Products Amendment \(Marketing Orders\) Act 1997](#) apply only to a poll that the Governor directs to be taken under section 81 after the commencement of those amendments.
- (2) The amendment made to section 85 (4) by the [Marketing of Primary Products Amendment \(Marketing Orders\) Act 1997](#) applies only to a poll taken under section 86 on the basis of a notice that is published under section 85 (2) after the commencement of that amendment.
- (3) The amendment made to section 97 by the [Marketing of Primary Products Amendment \(Marketing Orders\) Act 1997](#) applies only to a poll that the Governor directs to be taken under section 96 after the commencement of that amendment.
- (4) The amendment made to section 98 by the [Marketing of Primary Products Amendment \(Marketing Orders\) Act 1997](#) applies only to a poll that the Governor directs to be taken under section 98 after the commencement of that amendment.

Part 6 Provisions consequent on enactment of [Marketing of Primary](#)

Products Amendment (Rice Marketing Board) Act 1998

16 Previous appointments, agreements and exemptions not affected

Except as specifically provided in Schedule 6, no provision of that Schedule applies to, or affects the validity or duration of—

- (a) any appointment made, or
 - (b) any agreement entered into or renewed, or
 - (c) any exemption granted,
- before the commencement of the provision concerned.

Part 7 Provisions consequent on enactment of Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Act 2005

17 Nature of certain appointments

- (1) Nothing in—
 - (a) the order under section 51, dated 28 April 2005, by which the Co-operative is appointed as an authorised buyer in relation to rice, or
 - (b) the agreement, dated 28 April 2005, between the Board and the Co-operative, is to be construed as appointing the Co-operative as an exclusive authorised buyer in relation to rice for sale or supply within Australia.
- (2) Accordingly, neither the Board nor the State is liable to the Co-operative for any loss or damage suffered by the Co-operative, or by any person claiming through the Co-operative, as a consequence of the Board's appointment of any other person as an authorised buyer in relation to rice for sale or supply within Australia.

- (3) In this clause—

the Board means the Rice Marketing Board.

the Co-operative means Ricegrowers' Co-operative Limited.

Part 8 Provisions consequent on enactment of Rice Marketing Amendment Act 2024

18 Definition

In this part—

Board means the Rice Marketing Board for the State of New South Wales.

19 Vesting of existing rice grown in Northern Rivers region

- (1) Despite section 67B, rice cultivated and harvested in the excluded area before 1 September 2024 is taken to be a commodity vested in the Board by section 56(2).
- (2) The exemptions in section 67B(4) and (5) do not apply in relation to rice referred to in this clause.

20 End of rice vesting

- (1) Despite section 67C, an entitlement or function conferred by or under this Act on an authorised buyer, including a condition of appointment, continues to apply in relation to rice purchased before 1 July 2025.
- (2) For section 67C, the Minister may, by order, do the following—
 - (a) decrease the number of members of the Board to at least 3 while the Board winds up its affairs,
 - (b) dissolve the Board if satisfied the affairs of the Board are wound up,
 - (c) provide for the transfer of the assets, rights and liabilities of the Board to a public authority,
 - (d) provide for other savings or transitional matters.
- (3) If the number of members of the Board is decreased under subclause (2)(a), the quorum for a meeting of the Board is a majority of members.
- (4) In this clause—

public authority means the following, but does not include a person or body prescribed by the regulations for this definition—

- (a) a Public Service agency within the meaning of the *Government Sector Employment Act 2013*,
- (b) a statutory body representing the Crown,
- (c) a statutory State owned corporation or subsidiary within the meaning of the *State Owned Corporations Act 1989*,
- (d) a council, county council or joint organisation within the meaning of the *Local Government Act 1993*.

Schedule 5 (Repealed)

Schedule 6 Special provisions relating to Rice Marketing Board

section 67D

Part 1 Preliminary

1 Purpose of Schedule

The purpose of this Schedule is to make further provision with respect to the exercise of functions by the Rice Marketing Board for the State of New South Wales as a marketing board under Part 3 of this Act.

2 Definitions

In this Schedule—

Board means the Rice Marketing Board for the State of New South Wales constituted as a board under this Act.

3 Application

- (1) This Act (other than this Schedule) and, in particular, Part 3 of this Act, have effect subject to this Schedule.
- (2) The provisions of this Act (other than this Schedule) that apply with respect to the Board apply with such modifications as are necessary for the purposes of this Schedule and with such modifications (if any) as may be prescribed by the regulations.

Part 2 General functions of Board

4, 5 (Repealed)

6 Exemption by Board

- (1) An exemption granted by the Board under section 57 may be granted for such term (not exceeding 4 years) as may be specified in the instrument of exemption.
- (2) The unexpired term of an exemption granted under section 57 may be extended by one year—
 - (a) in the case of an exemption granted for a term of one year or less—
 - (i) at any one time before the expiration of the term, and
 - (ii) on the first (and each subsequent) anniversary of the date on which an extension is granted under subparagraph (i), and
 - (b) in the case of an exemption granted for a term exceeding one year—on the first (and each subsequent) anniversary of the date of the granting of the exemption,

unless the exemption is sooner revoked.

- (3) The Board is to grant any such extension by notice in writing signed by the secretary or other authorised officer of the Board. The notice—
 - (a) in the case of an exemption applying in relation to a particular producer or producers—is to be given to the producer or producers, or
 - (b) in any other case—is to be published in the Gazette and in such other manner as is approved by the Minister having regard to the object of bringing notices of that kind to the attention of any persons directly affected by the relevant extensions.
- (4) Despite section 57 (3), an exemption granted by the Board under section 57 is not to be revoked unless the Minister approves of the proposed revocation.
- (5) Subclause (4) extends to apply to and in respect of the exemption granted by means of the Notice of Exemption signed for and on behalf of the Board by its Chairman and Secretary on 10 February 1998 and published in Gazette No 52 of 13 March 1998 at page 1537.

7 Specific authorisation for section 51 of [Trade Practices Act 1974 \(Cth\)](#) and [Competition Code](#)

Without affecting the generality of section 164 (Authorisations for section 51 of [Trade Practices Act 1974 \(Cth\)](#) and [Competition Code](#)), the following are, up to and including 31 January 2009, specifically authorised by this Act for the purposes of section 51 of the [Trade Practices Act 1974](#) of the Commonwealth and the *Competition Code of New South Wales*—

- (a) anything done, by or on behalf of the Board or any appointee of the Board under Part 3, in the exercise of any function in accordance with that Part or this Schedule, and
- (b) anything done under any agreement or arrangement entered into by or with the Board under Part 3 or this Schedule, and
- (c) anything done under the agreement made on 26 July 2001 between the Board and Ricegrowers' Co-operative Limited (relating to the whole of the annual New South Wales rice crop), as renewed and in force from time to time.

8 Chairperson of the Board

- (1) The Chairperson of the Board is to be elected from among the nominated members of the Board.
- (2) This clause commences on the first day after the commencement of the [Rice Marketing Amendment Act 2007](#) on which there is a vacancy in the office of Chairperson.